(25,611)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1916.

No. 781.

D. CAMPBELL, PLAINTIFF IN ERROR,

vs.

ANNIE WADSWORTH, MAGGIE BEAMORE, AND NANCY ALEXANDER.

IN ERROR TO THE SUPREME COURT OF THE STATE OF OKLAHOMA.

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., FEBRUARY 20, 1917.

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1 *Return to Writ of Error.*

UNITED STATES OF AMERICA,
Supreme Court of Oklahoma, ss:

In obedience to the commands of the within writ, I herewith transmit to the Supreme Court of the United States a duly certified transcript of the complete record and proceedings in the within entitled cause, as specified in the praecipe for record of the parties to said cause, the same being a full and correct copy of everything specified in said praecipe for record, together with all things concerning the same.

In witness whereof, I hereunto subscribe my name, and affix the seal of said Supreme Court of the State of Oklahoma, in Oklahoma City, State of Oklahoma, this 15th day of November, 1916.

[Seal Supreme Court, State of Oklahoma.]

WM. M. FRANKLIN,
Clerk of the Supreme Court of Oklahoma,
By —— ——, *Deputy.*

Costs of Defendant in Error, D. Campbell, $6.25.
Paid by Defendant in Error, D. Campbell.

2 *Certificate of Lodgment.*

UNITED STATES OF AMERICA,
Supreme Court of Oklahoma, ss:

I, Wm. M. Franklin, Clerk of the Supreme Court of the State of Oklahoma, do hereby certify that there was lodged with me as such Clerk of said Court on the 9th day of November, 1916, in the matter of D. Campbell, versus, Annie Wadsworth, Maggie Beamore and Nancy Alexander:

1. The original bond of which a copy is herein set forth;
2. Four copies of the writ of error, one for each defendant, and one to file in my office;
3. A copy of the petition for writ of error, as herein set forth;
4. A copy of the Assignments of error and prayer for reversal.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court at my office, in Oklahoma City, Oklahoma, this 15th day of November, 1916.

[Seal Supreme Court, State of Oklahoma.]

WM. M. FRANKLIN,
Clerk of the Supreme Court of the State of Oklahoma,
By —— ——, *Deputy.*

3 Filed in Supreme Court of Oklahoma Nov. 15, 1916. William M. Franklin, Clerk.

Citation.

THE UNITED STATES OF AMERICA, *ss:*

The President of the United States to Annie Wadsworth, Maggie Beamore and Nancy Alexander, Greeting:

You, and each of you, are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, D. C., within thirty days from the date hereof, pursuant to a writ of error filed in the office of the Clerk of the Supreme Court of the State of Oklahoma, wherein D. Campbell is plaintiff in error and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Matthew J. Kane, Chief Justice of the Supreme Court of the State of Oklahoma, this 9th day of November, in the year of our Lord one thousand nine hundred and sixteen.

MATTHEW J. KANE,
Chief Justice of the Supreme Court
of the State of Oklahoma.

Attest:

[Seal Supreme Court, State of Oklahoma.]

WM. M. FRANKLIN,
Clerk of the Supreme Court
of the State of Oklahoma,
By —— ——, *Deputy.*

4 In the Supreme Court of the State of Oklahoma.

No. 5667.

ANNIE WADSWORTH et al., Plaintiffs in Error,

vs.

GEORGE C. CRUMP et al., Defendants in Error.

I hereby deputize and authorize Mr. M. P. Howser, of Broken Arrow, Oklahoma, to serve the citation in the above entitled cause, issued by me on the 9 day of November, 1916.

Witness my hand this 9 day of November, 1916.

MATTHEW J. KANE,
Chief Justice of the Supreme Court of the State of Oklahoma.

Attest:

[Seal Supreme Court, State of Oklahoma.]

WM. M. FRANKLIN,
Clerk of Supreme Court of Oklahoma,
By ——— ———, *Deputy.*

Filed in Supreme Court of Oklahoma, Nov. 9, 1916. William M. Franklin, Clerk.

5 STATE OF OKLAHOMA,
Tulsa County, ss:

M. P. Howser, of lawful age, being first duly sworn, on oath deposes and says:

I was duly authorized and deputized by Honorable Matthew J. Kane, Chief Justice of the Supreme Court of the State of Oklahoma, to serve upon the defendants in error Annie Wadsworth, Maggie Beamore and Nancy Alexander, the citation hereto attached, issued the 9th day of November, 1916. I served the same by delivering personally to Mr. J. S. Severson, attorney of record for Annie Wadsworth, Maggie Beamore and Nancy Alexander, defendants in error, a true and certified copy of said citation, with all endorsements thereon, at Broken Arrow, Oklahoma, on the 13th day of November, 1916, at 9:20 o'clock A. M.

Witness my hand this 13th day of November, 1916.

M. P. HOWSER.

Subscribed and sworn to before me this 13th day of November, 1916.

[Seal Frank Ingraham, Court Clerk, Tulsa County, Oklahoma.]

FRANK INGRAHAM,
Court Clerk of Tulsa County, State of Oklahoma,
By GERTRUDE PURDY, *Dep.*

Filed in Supreme Court of Oklahoma, Nov. 15, 1916. William M. Franklin, Clerk.

6 Filed in Supreme Court of Oklahoma Nov. 9, 1916. William M. Franklin, Clerk.

In the Supreme Court of the State of Oklahoma.

No. 5667.

ANNIE WADSWORTH et al., Plaintiffs in Error,

vs.

GEORGE C. CRUMP et al., Defendants in Error.

Petition for Writ of Error.

To the Honorable Matthew J. Kane, Chief Justice of the Supreme Court of the State of Oklahoma:

Considering himself aggrieved by the final decision of the Supreme Court of Oklahoma in rendering judgment against him in the above entitled cause, D. Campbell by his petition for writ of error respectfully shows: That heretofore, to-wit: on the 5th day of June, 1913, there was tried in the District Court of Seminole County, State of Oklahoma, an action and cause in which your petitioner, D. Campbell, was *was* defendant, and said Annie Wadsworth, Maggie Beamore and Nancy Alexander were plaintiffs.

That in said cause said plaintiffs alleged in their petition therein that Louis Cox was a Seminole Indian and duly enrolled as such on the approved Seminole Roll opposite No. 1721 thereof, and that by virtue thereof there was allotted to him of the lands of the Seminole Nation the following described lands situate in Seminole County, State of Oklahoma, to-wit:

The North ½ of the Northeast ¼ and the East ½ of the Northeast ¼ of the Northwest ¼ and the North ½ of the Southeast ¼ of the Northeast ¼ of Section 20, Township 10 North, Range 8 East;

that said Louis Cox died intestate on the 4th day of July, 1901, and left the said plaintiffs as his heirs at law; that the said Annie Wadsworth is the legal widow of said Louis Cox, deceased, and the said Maggie Beamore and Nancy Alexander are the daughters of said Louis Cox, deceased, and that by virtue of the laws in force at the time of the death of said Louis Cox the said plaintiffs as
7 the surviving wife and daughters of said deceased are his only heirs at law and as such entitled to the said entire allotment of land, and that they are the owners thereof in fee simple and entitled to the immediate possession thereof, and that the defendants therein are in the possession of said land and are unlawfully keeping said plaintiffs out of the possession thereof; that said defendants therein are claiming some right, title or interest in said land the nature and extent of which is to the plaintiffs un-

known, and therefore cannot be set out by plaintiffs, but that all of said claims are as to said plaintiffs absolutely void; that said plaintiffs are advised and so believe that one Lucy Wildcat, deceased, in her lifetime claimed some interest in said land, which claims were as to said plaintiffs void, and that said Lucy Wildcat left no heirs; and said plaintiffs prayed for recovery of said land, for quieting title thereto in them, and for damages for withholding the same from them by said defendants.

That thereafter, in said action, the defendants George C. Crump, Guy B. Van Sandt and Lucile Van Sandt disclaimed all interest or title to said land, and all other defendants therein, except said D. Campbell, were by said trial court adjudged in default and to have no right, title or interest in said land.

That in his answer to said petition, the said defendant, D. Campbell, denied each and every allegation of said petition and demanded strict proof of the same; and further alleged that on the 9th day of February, 1911, for a valuable consideration he purchased said land from R. D. Milton, and that said R. D. Milton on the 28th day of December, 1910, for a good and valuable consideration purchased said land from George C. Crump, and that said George C. Crump on the 2nd day of August, 1907, for a good and valuable consideration purchased said land from Lucy Wildcat; that said Lucy Wildcat was a single woman and a duly enrolled Seminole Indian and citizen of the said Seminole Nation, and was the sister and only surviving relative of said Louis Cox, deceased; That said Louis Cox was a duly enrolled Seminole Citizen, and, after having been so enrolled, died intestate on the 4th day of July, 1901, without having received his allotment of land in the Seminole Nation, as his distributive share of the lands of the said Seminole Tribe, but that after his death, on the 28th day of June, 1902, the said allotment was made by the Commission to the Five Civilized Tribes and an allotment certificate was duly issued therefor at the instance and request of said Lucy Wildcat, who was during her lifetime the sole legal and equitable owner of said allotment and had a good right to sell and convey the same, and that through said conveyances aforesaid said defendant acquired a valid title to said land; that said Annie Wadsworth, Maggie Beamore and Nancy Alexander are all members and duly enrolled citizens of the Creek Tribe of Indians, as shown by the approved Creek Rolls, and that they have no valid claim to said land. And, said Defendant, D. Campbell, prayed that the title to said land be quieted in him, and for all other proper relief.

That on the said 5th day of June, 1913, said cause was tried in the said District Court of Seminole County, State of Oklahoma, upon said pleadings and an agreed statement of facts entered into by the said plaintiffs and defendant in which they agreed that, said land was allotted by the Government of the United States as the distributive share of said Louis Cox in said Seminole lands, and that said Louis Cox, deceased, appears on the final Seminole Rolls and is a citizen of said Tribe opposite No. 1[illegible]1 of the approved Seminole Rolls, and that said Louis Cox died intestate on the 4th day of July, 1901, without

having selected or received his said allotment, and that said allotment was thereafter selected and made by the United States Government, as aforesaid; that at the time of the death of said Louis Cox he was lawfully married to one Annie Cox, now Annie Wadsworth, one — the *the* plaintiffs therein, and as issue of said marriage he was survived by said Maggie Beamore and Nancy Alexander, plaintiffs therein, as his daughters, and that said wife and two daughters are members and citizens of the Creek Tribe of Indians and are duly enrolled as such opposite Nos. 7555, 7556, and 7557 of the
9 approved Creek Roll, respectively; that the only Seminole Cotizen relative surviving said Louis Cox was said Lucy Wildcat, who is duly enrolled on the Seminole Roll opposite No. 400, and that the defendant D. Campbell, claims through her by the conveyances for said land as aforesaid; and attached thereto as a part of said agreed statement a certified copy of Creek Census Card No. 2523, showing the enrollment of said plaintiffs, and Seminole Census Card No. 528, showing the enrollment of said Louis Cox. That in said trial said trial court decreed said land to said defendant, D. Campbell, holding that under the Seminole Supplemental Agreement, 31 Stat. L. 250, no one but enrolled Seminole citizens could inherit said allotment, and that the same was inherited thereunder by said Lucy Wildcat. That said plaintiffs therein appealed from said judgment to the Supreme Court of Oklahoma, which is the highest court of said State of Oklahoma having jurisdiction to hear and determine said matters therein involved. That on the 19th day of October, 1915, said Supreme Court of Oklahoma decided said appeal and affirmed said judgment of said trial court, holding that, under said Seminole Supplemental Treaty, said land when allotted *de*descended to the heirs of said deceased who are Seminole citizens, and that said Lucy Wildcat was the only such heir and inherited and received said land when same was allotted, as aforesaid, and affirmed said judgment of said trial court. That thereafter said plaintiffs in error therein filed a petition for reh-aring which was denied by said Supreme Court of Oklahoma on the 23rd day of January, 1916. That thereafter on the 21st day of March, 1916, without any notice whatever to said defendant in error therein, D. Campbell, the said Supreme Court of Oklahoma gave said plaintiffs in error therein leave to file their second petition for rehearing, and withdrew the mandate on the former judgment which had been sent to said trial court, and reconsidered said cause on the same day upon such petition for rehearing without any notice to said D. Campbell or an opportunity to him to be heard, and recalled its former decision in favor of said D. Campbell, and reversed the said judgment of the said trial court and remanded said cause to said trial court with instructions
10 to render judgment in favor of said plaintiffs in error for said land, holding and deciding that, regardless of the Seminole Supplemental Treaty, the said allotment descended to the said plaintiffs in error, who were Creek Citizens. That thereafter on the 10th day of April, 1916, the said defendant in error, D. Campbell, filed his petition for rehearing therein, showing: that he had no notice of the said rehearing and change of decision in said cause and had no

opportunity to be heard, and *and* that said last decision was also contrary to the former decisions of said State of Oklahoma on said subject and was contrary to the provisions of said Seminole Supplemental Treaty, which petition was denied on the 31st day of May, 1916, as shown by the record herein. Said decision of said Supreme Court of Oklahoma denied to your petitioner a title, right, privilelge and immunity held by your petitioner under the Constitution and statutes of the United States, and denied to him the right to said land as aforesaid set forth, under said Seminole Supplemental Treaty, 31 Stat. L. 250, which was drawn in question in said cause and decision, which decision is contrary to said Federal statute and Treaty.

Wherefore, your petitioner prays that a writ of error may issue that he may be allowed to bring up for review before the United States Supreme Court, the said decree, judgment and decision of the Supreme Court of Oklahoma, and the record and proceedings concerning the same, for the correction of said errors complained of, and that he may have such other relief in the premises as may be just, and he will ever pray.

C. DALE WOLFE,
Counsel for D. Campbell.

Wewoka, Oklahoma.

The writ of error as prayed for in the foregoing petition is hereby allowed this 9 day of November, 1916, and bond is fixed at $500.00, and the bond here presented signed by D. Campbell, as principal, and E. C. Aldridge and J. C. Lillard, as sureties, in the penal sum of $500.00, payable to Annie Wadsworth, Maggie Beamore and Nancy Alexander, is hereby approved.

MATTHEW J. KANE,
Chief Justice Supreme Court Oklahoma.

Attest:

[Seal Supreme Court, State of Oklahoma.]

WM. M. FRANKLIN,
Clerk Supreme Court, Okla.

11 Filed in Supreme Court of Oklahoma Nov. 9, 1916. William M. Franklin, Clerk.

In the Supreme Court of the State of Oklahoma.

No. 5667.

ANNIE WADSWORTH et al., Plaintiffs in Error,

vs.

GEORGE C. CRUMP et al., Defendants in Error.

Assignments of Error and Prayer for Reversal.

Comes now D. Campbell, the above defendant in error in the said entitled cause, and makes and files herewith this his assignment of

errors, and respectfully says that in the record and proceedings, decision and final judgment of the Supreme Court of the State of Oklahoma, in the above entitled cause, there is manifest error, to his great injury, in this to-wit:

First. The said Supreme Court of the State of Oklahoma erred in holding and deciding that under the said Seminole Supplemental Agreement, 31 Stat. L. 250, the said land or allotment of Louis Cox, deceased, who was a Seminole Citizen, descended to the said plaintiffs in error in this cause, Annie Wadsworth, Maggie Beamore and Nancy Alexander, who are each Citizens of the Creek Nation and duly enrolled as such, for the reason that said Seminole Supplemental Agreement directs that said allotment shall descend to the heirs of said Louis Cox, deceased, who are Seminole Citizens; and the said Lucy Wildcat was a Seminole Citizen and the only surviving relative of said Louis Cox, deceased, who was a Seminole Citizen, and was a Sister of said Louis Cox.

Second. The said Supreme Court of Oklahoma erred in holding and deciding that said allotment of land of said Louis Cox, deceased, did not descend to said Lucy Wildcat, who was the only surviving relative of said Louis Cox, deceased, who was a Seminole Citizen, under said Seminole Supplemental Treaty, for the reason that said Treaty directs that said allotment should descend to the heirs of said Louis Cox, deceased, who are Seminole Citizens.

Third. The said Supreme Court of Oklahoma erred in
12 holding and deciding that said land or allotment descended to said Maggie Beamore and Nancy Alexander, and in decreeing said land to them, for the same reasons set forth in the first and second assignments of error.

Fourth. The said Supreme Court of the State of Oklahoma erred in holding and deciding that under said Seminole Supplemental Treaty, 31 Stat. L. 250, the said Annie Wadsworth, as the surviving wife of said Louis Cox, deceased, took a life estate or dower in the said allotment of said Louis Cox, because she was not a Seminole Citizen, but was a Creek Citizen, and because said allotment was not in existence at the time of the death of said Louis Cox, but was made after his death; and the said Louis Cox did not die seized or possessed of said allotment, and the said Annie Wadsworth, as the surviving wife of said Louis Cox, deceased, could have no inheritable interest or dower in said allotment.

Fifth. The said Supreme Court of the State of Oklahoma erred in granting leave to said plaintiffs in error to file a 2nd petition for rehearing,—after the judgment of the trial court had been affirmed and mandate sent to the trial court,—and in withdrawing its said former or first decision and in taking up and reconsidering said cause and rendering a new decision and judgment reversing the judgment of the trial court and awarding and directing judgment for said allotment to said plaintiffs in error, and recalling the mandate issued on its first decision and judgment affirming the judgment of the trial court; all of which was done on the same day and without any notice to said defendant in error, D. Campbell, or an opportunity to be heard, which deprived said D. Campbell of his said property and

rights without due process — law and the right to be heard in violation *to* the rights guaranteed to him by the Constitution of the United States and the Fifth Amendment to the Constitution of the United States; as shown by the record in said cause; and in denying the petition for rehearing of said defendant in error, D. Campbell, filed herein.

13 For which errors, the said defendant in error, D. Campbell, prays that the said judgment and decision of the Supreme Court of Oklahoma in said cause, dated the 21st day of March, 1916, decreeing that said allotment was inherited by said plaintiffs in error and directing that judgment be rendered for them for the same, and the order of said Supreme Court made on the 31st day of May, 1916, denying said D. Campbell's petition for rehearing, be reversed and set aside, and that judgment be rendered in favor of said defendant in error, D. Campbell, for said land, and for costs; and that he be restored to all things which he has lost by said judgment and decision, and that he have such other and further relief as may be proper and just.

C. DALE WOLFE,
Counsel for Defendant in Error, D. Campbell.

Wewoka, Oklahoma.

14 Filed in Supreme Court of Oklahoma Nov. 9, 1916. William M. Franklin, Clerk.

In the Supreme Court of the State of Oklahoma.

No. 5667.

ANNIE WADSWORTH et al., Plaintiffs in Error,

vs.

GEORGE C. CRUMP et al., Defendants in Error.

The above entitled matter coming on to be heard upon the petition of D. Campbell, the appellee therein, for a writ of error from the Supreme Court of the United States to the Supreme Court of the State of Oklahoma, and upon examination of said petition and the record in said matter, and desiring to give the petitioner an opportunity to present in the Supreme Court of the United States the questions and errors presented in the record in said matters,

It is ordered that a writ of error be, and is hereby allowed to this court from the Supreme Court of the United States, and that the bond presented by said petitioner be, and the same is, hereby approved.

This 9 day of November, 1916.

MATTHEW J. KANE,
Chief Justice of the Supreme Court of Oklahoma.

Attest:

[Seal Supreme Court, State of Oklahoma.]

WM. M. FRANKLIN,
Clerk of Supreme Court of Oklahoma.
By ——— ———, *Deputy.*

15 Filed in Supreme Court of Oklahoma Nov. 10, 1916. William M. Franklin, Clerk.

Writ of Error.

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the Honorable the Judges of the Supreme Court of the State of Oklahoma, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in said Supreme Court of the State of Oklahoma before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between Annie Wadsworth, Maggie Beamore and Nancy Alexander, as plaintiffs in error, and D. Campbell, as defendant in error, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties or laws of the United States, and the decision was in favor of their validity; or wherein was drawn in question the construction of a clause of the Constitution, or a treaty, or statute of, or a commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission; a manifest error hath happened to the great damage of the said D. Campbell, as by his complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have

16 the same at Washington in the said Supreme Court, within thirty days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right,

and according to the laws and customs of the United States, should be done.

Witness, the Honorable Edward D. White, Chief Justice of the United States, the 9th day of November, in the year of our Lord one thousand nine hundred and sixteen.

[Seal of the United States District Court, Western District of Oklahoma.]

ARNOLD C. DOLDE,
Clerk of the District Court of the United States for the Western District of Oklahoma.

Allowed by
MATTHEW J. KANE,
Chief Justice of the Supreme Court of the State of Oklahoma.

17 Filed in Supreme Court of Oklahoma Nov. 9, 1916. William M. Franklin, Clerk.

(Copy.)

In the Supreme Court of the State of Oklahoma.

No. 5667.

ANNIE WADSWORTH et al., Plaintiffs in Error,

vs.

GEORGE C. CRUMP et al., Defendants in Error.

Know all men by these presents, that we, D. Campbell, as principal, and J. C. Lillard and E. C. Aldridge, of Wewoka, Seminole County, State of Oklahoma, as sureties, are held and firmly bound unto the above named Annie Wadsworth, Maggie Beamore and Nancy Alexander, plaintiffs in error, in the sum of Five Hundred Dollars, to be paid to the said Annie Wadsworth, Maggie Beamore, and Nancy Alexander, for the payment of which well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors and administrators, jointly and severally firmly by these presents. Sealed with *our* seals, and dated this 7th day of November, in the year of our Lord One Thousand Nine Hundred and Sixteen.

Whereas, the above named defendant in error, D. Campbell, has obtained a writ of error in the above entitled cause to review a decision of said Supreme Court of Oklahoma made and entered therein on the 21st day of March, 1916, wherein said D. Campbell was defendant in error, and said Annie Wadsworth, Maggie Beamore and Nancy Alexander were plaintiffs in error, and said decision was against said D. Campbell and in favor of said Annie Wadsworth, Maggie Beamore and Nancy Alexander, and said defendant in error,

D. Campbell, seeks to prosecute his said writ of error to the Supreme Court of the United States to review said decision rendered by the Supreme Court of the State of Oklahoma against him in said cause, as aforesaid.

Now, therefore, the condition of this obligation is such, that if the above named D. Campbell shall prosecute his said writ of error to effect, and answer all costs and damages that may be adjudged against him if he shall fail to make good his plea, then this obligation to be void, otherwise to remain in full force and virtue.

18

D. CAMPBELL. [SEAL.]
J. C. LILLARD. [SEAL.]
E. C. ALDRIDGE [SEAL.]

STATE OF OKLAHOMA,
Seminole County, ss:

J. C. Lillard and E. C. Aldridge being each duly sworn on oath depose and say: We are each of lawful age and are citizens of Seminole County, State of Oklahoma, and know the contents of the foregoing bond to which we have attached our names; and we each for himself say that we are worth the sum of Five Hundred Dollars over and above all debts, liabilities and exemptions, under the laws of the State of Oklahoma; and we so certify by these presents this 7th day of November, 1916.

J. C. LILLARD.
E. C. ALDRIDGE.

Taken, subscribed and sworn to before me on this 7 day of November, 1916.

[Seal O. J. McCann, Notary Public, Seminole County, Okla.]

O. J. McCANN,
Notary Public.

My Comm. expires: Aug. 22, 1918.

The foregoing bond is hereby approved this 9 day of November, 1916.

MATTHEW J. KANE,
Chief Justice of the Supreme Court of the State of Oklahoma.

Attest:

[Seal Supreme Court, State of Oklahoma.]

WM. M. FRANKLIN, *Clerk,*
By —— ——, *Deputy.*

19 Filed in Supreme Court of Oklahoma Nov. 9, 1916. William M. Franklin, Clerk.

In the Supreme Court of the State of Oklahoma.

No. 5667.

ANNIE WADSWORTH et al., Plaintiffs in Error,

vs.

GEORGE C. CRUMP et al., Defendants in Error.

Praecipe for Transcript of Record on Writ of Error in the Supreme Court of the United States.

To the Clerk of the Supreme Court of the State of Oklahoma, Greeting:

Please prepare transcript of record in the above entitled cause for the purpose of reviewing the decision of the Supreme Court of Oklahoma in the above entitled cause by writ of error in the Supreme Court of the United States, consisting of the papers and parts of said record on file in your office in said cause, following, to-wit:

Petition in Error attached to said record;

Petition of plaintiffs, pages 2 to 5, inc., of record;

Disclaimer of George C. Crump, et al., page 8 of record;

Answer of defendant, D. Campbell, pages 9 and 10 of record;

Journal entry of judgment in trial court, including agreed statement of facts and exhibits, pages 12 to 16, inc., of record;

Motion for new trial, page 17 of record;

Order overruling motion for new trial, page 18 of record;

Record of the Supreme Court of Oklahoma in said cause, to-wit:

Journal entry submitting cause, September 20, 1915;

Journal entry affirming judgment and adopting opinion, October 19, 1915;

Opinion, affirming judgment, filed October 19, 1915;

Journal entry, allowing petition for rehearing to be filed out of time, and staying mandate, November 16, 1916;

Petition for rehearing filed by plaintiffs in error November 15, 1915;

20 Journal entry, denying petition for rehearing of plaintiffs in error, January 25, 1916;

Journal entries of March 21, 1916, granting leave to plaintiffs in error to file second petition for rehearing, recalling and staying mandate, rehearing and reversing cause and rendering judgment for plaintiffs in error;

Opinion of the court filed March 21, 1916; reversing cause;

Petition for rehearing filed by defendants in error April 10, 1916;

Journal entry, overruling the petition for rehearing of plaintiffs in error, May 31, 1916.

All of which as set forth and attached to this praecipe.
Dated this 9th day of September, 1916.

C. DALE WOLFE,
Counsel for Defendant- in Error, Wewoka, Okla.

Service and receipt of copy of the foregoing praecipe and the portions of the record therein designated is hereby acknowledged this —— day of September, 1916.

——— ———,
Attorney of Record for Plaintiffs in Error.

21 In the Supreme Court of the State of Oklahoma.

No. 5667.

ANNIE WADSWORTH et al., Plaintiff- in Error,

vs.

GEORGE C. CRUMP et al., Defendants in Error.

Petition in Error.

The said Annie Wadsworth, et al., plaintiffs in error complain of said defendants in error George C. Crump, et al., for this that said defendants in error at the March 1913 term of the District Court of Seminole County, Oklahoma, recovered a judgment against said plaintiffs in error in a certain case therein pending wherein the said Annie Wadsworth, et al., were plaintiffs and the said George C. Crump, et al., were defendants, the original case made duly certified and attested, is herewith attached, marked Exhibit "A" and made a part of this petition in error, and said Annie Wadsworth, et al., plaintiffs in error aver that there is error in said record and proceedings, to-wit:

First. Said Court erred in overruling said motion of said plaintiffs in error for a new trial.

Second. Said judgment is not sustained by evidence in the agreed statement of facts.

Third. Said judgment is contrary to law.

Wherefore plaintiffs in error pray that said judgment so rendered may be reversed, set aside and held for naught, and that plaintiffs in error may be restored to all rights they have lost by the rendition of said judgment and for all other relief as to the court may seem just.

ANNIE WADSWORTH ET AL.,
Plaintiffs in Error.
By J. S. SEVERSON, *Attorney.*

We the undersigned attorneys for defendants in error hereby waive the issuance and service of summons in error, in the above styled case. This 7 day of October, 1913.

B. F. DAVIS,
Attorneys for Defendant in Error.

Filed Oct. 11, 1913. W. H. L. Campbell, Clerk.

22 In the District Court of Seminole County, State of Oklahoma.

ANNIE WADSWORTH, MAGGIE BEAMORE, and NANCY ALEXANDER, Plaintiffs,

vs.

GEORGE C. CRUMP, GUY B. VAN SANDT, LUCILE M. VAN SANDT, R. D. Milton, D. Campbell, —— Campbell, Wife of D. Campbell; C. R. Home, and Unknown Heirs of Louis Cox, Deceased, Defendants.

Petition.

Comes now the plaintiffs and sue the defendants and for cause avers and states:

1.

That plaintiff, Annie Wadsworth, is the legal widow of Louis Cox, deceased, and the plaintiffs Maggie Beamore and Nancy Alexander are the daughters of said Louis Cox, deceased, and as such widow and daughters they are the sole heirs at law of said Louis Cox, deceased.

2.

Plaintiffs allege that said Louis Cox died intestate on the 4th day of July, 1901, leaving the above named plaintiffs as his heirs at law, that said Louis Cox, deceased, was enrolled as a Seminole Indian opposite Roll No. 1721, and by virtue thereof there was allotted to him the following land in Seminole County, Oklahoma, to-wit:

The North ½ of the N. E. ¼ & the E. ½ of the N. E. ¼ of the N. W. ¼ & N. ½ of the S. E. ¼ of the N. E. ¼ of Sec. 30, Twp. 10 North, Range 8 East, in Seminole County, Oklahoma, the allotment of Louis Cox, deceased.

3.

Plaintiffs allege that by virtue of the laws in force at the time of the demise of said Louis Cox, the plaintiffs herein as the surviving wife and daughters of said decedent are his only heirs at law and as such entitled to the entire allotment as above set out.

23

4.

For further cause of action against said defendants the plaintiffs allege and state that by virtue of being the sole heirs at law of said Louis Cox, deceased, as aforesaid they are the owners of the said allotment of said deceased as hereinbefore described, and that they are the owners of the legal title to the same in fee simple and of the equitable estate therein and that they are entitled to the immediate possession of the same.

5.

Plaintiffs further state that the defendants and each of them have since the 29th day of May, 1906, unlawfully kept plaintiffs out of the possession of said premises as such owners and are now unlawfully keeping plaintiffs out of the possession of the same; that they have collected and used for their benefit during said time the rents and profits arising from said premises amounting to the sum of $100.00 per year making a total of $600.00.

6.

Plaintiffs state that they have been entitled to the possession of said above described land ever since the 29th day of May, 1906, and that they are now entitled to said possession and that the said defendants have been unlawfully keeping them out of said possession since the 29th day of May, 1906, and by reason thereof said plaintiffs have been damaged in the sum of $200.00.

7.

For further cause of action against the defendants above named the plaintiffs allege that said defendants and each of them claim some right, title or interest in said lands above described, the nature and extent of which is to the plaintiffs unknown and can therefore not be set out, but that all of said claims or pretended claims are as to the plaintiffs absolutely void.

8.

Plaintiffs further state that they are advised and so believe that one Lucy Wildcat who is now deceased claimed some right
24 title or interest in said land during her life time, which claims were as to these plaintiffs void, and that said Lucy Wildcat left no heirs so far as these plaintiffs have been able to ascertain by dil/igent inquiry, but in order to forever quiet the title to said tracts of land, plaintiffs ask that said heirs at law of said Lucy Wildcat if any there should be be made defendants hereto and they are herein made defendants. Plaintiffs further state that they have made dil/igent inquiry in order to locate any other relatives or persons that might or could claim any right title or interest in said premises hereinbefore described but have been unable to locate any but in order to fully determine and forever quiet the title of said premises in said plaintiffs herein against any and all persons claiming an interest therein as heirs of said deceased or otherwise, plaintiffs hereby make the unknown heirs of said Louis Cox, deceased, and any and all persons whomsoever, parties defendant to this action, and allege that such persons' claim — title and interest in and to such premises hereinbefore described, adverse to the title to the plaintiffs herein, the nature and extent of which title is to the plain-

tiffs unknown, is so far as these plaintiffs are concerned absolutely void and without right as against these plaintiffs, and that the unknown heirs of Louis Cox, deceased, or any of them, have no right, title or interest in said premises or any part thereof, and that the names and residences of such persons and all of them are to the plaintiffs unknown.

Wherefore plaintiffs pray, that the defendants be required to set forth the nature of their claims to the premises if any they have and that this court decree that the plaintiffs' claim and title to said premises, to-wit: The N. ½ of N. E. ¼ & E. ½ of N. E. ¼ of N. W. ¼ & N. ½ of S. E. ¼ of N. E. ¼ of Sec. 30, Twp. 10 N., R. 8 East, Seminole County, Oklahoma, be valid and perfect, and that said defendants have no right or valid claim therein nor any interest whatsoever, and that the title of the plaintiffs therein be forever quieted and that the said defendants and each of them be perpetually
25 barred and enjoined from setting up or asserting any title or interest in said premises adverse to these plaintiffs. They further pray for immediate possession of said premises and for judgment against said defendants for the sum of $600.00 as rental due thereon and for the sum of $200.00 as damages for the wrongful detention of said premises in all the sum of $800.00, for costs herein expended and for all such other special, specific and general relief as they may be entitled to upon a full hearing of this cause.

J. S. SEVERSON,
Attorney for Plaintiffs.

STATE OF OKLAHOMA,
County of Tulsa, ss:

Nancy Alexander, who being first duly sworn states that she is one of the plaintiffs in the above and foregoing action, that she has read said petition, knows the contents thereof, and that the statements therein made are true to the best of her knowledge, information and belief.

(Signed) NANCY ALEXANDER.

Subscribed and sworn to before me this 6th day of June, 1912.

[SEAL.] A. M. LAWS,
Notary Public.

My Commission expires 2/23 1914.

26 That thereafter to-wit: on the 6th day of July, 1912, the defendants, George C. Crump, Guy B. Van Sandt and Lucile M. Van Sandt, filed their demurrser- to said action, which said demurrers were withdrawn and the said defendants filed in said court in said cause on the 4th day of December, 1912, their disclaimers in said case which is in the words as foliows, to-wit:

STATE OF OKLAHOMA,
Seminole County, ss:

In the District Court.

No. 2014.

ANNIE WADSWORTH et al., Plaintiffs,

vs.

GEORGE C. CRUMP et al., Defendants.

Disclaimer of George C. Crump, Guy B. Van Sandt, and Lucile M. Van Sandt.

Comes now George C. Crump, Guy B. Van Sandt and Lucile M. Vam Sandt, and disclaim any interest in the subject matter involved herein.

Wherefore they pray that they be discharged without costs.

GEO. C. CRUMP &
HARRY H. ROGERS,
Attorneys for Defendants.

27 That on the 12th day of July, 1912, the defendant, D. Campbell, filed his answer to said petition, which said answer is in the words as follows, to-wit:

STATE OF OKLAHOMA,
Seminole County, ss:

In the District Court.

No. 2014.

ANNIE WADSWORTH et al., Plaintiffs,

vs.

GEORGE C. CRUMP et al., Defendants.

Separate Answer of D. Campbell.

Comes now the defendant D. Campbell, and for his answer to the plaintiffs' petition filed herein specifically deny each and every allegation of said petition and demand strict proof of the same.

And for his further answer, the defendant D. Campbell, says that for a valuable consideration paid to R. D. Milton, on the 9th day of February, 1911, and without any notice of any claim herein set up by the plaintiffs he in good faith purchased said lands from the said Milton, the said Milton having purchased the same from George C. Crump, for a valuable consideration on the 28th day of December,

1910, said George C. Crump, having on the second day of August, 1907, so likewise purchased said land from Lucy Wildcat, a single woman enrolled as a Seminole half breed and being the sister and only surviving relative of said Louis Cox, deceased, who was also enrolled as a Seminole Citizen and who as alleged by plaintiffs died intestate on the 4th day of July, 1901, but who at the date of his death had not selected his allotment and had no certificate of allotment issued to him for his distributive share of the communal lands of the said Seminole Tribe of Indians, but that his certificate of allotment was, after his death, to-wit: on June 28th, 1902, is-
28 sued at the instance and request and for the benefit of his sole heir, Lucy Wildcat, who was during her lifetime the sole legal and equitable owner of said allotment; had a good and legal right to sell and convey the same, and from—through the muniments above described this defendant by his said purchase acquired a good and valid title superior to and freed from all the supposed claims of said plaintiffs, Annie Wadsworth, Maggie Beamore and Nancy Alexander, all of whom were members of the Creek Tribe of Indians and so appear on the approved rolls of said tribe, and whose claim, if any they have is Junior and inferior to this defendant's title to said land.

Wherefore defendant prays that plaintiffs take nothing by their said suit; that his title be decreed to be superior to their claims of title, and be quieted in him; that he go hence without day and recover his costs, and for all other proper relief to which he may be entitled in law or in equity.

DAVIS & DAVIS,
Attorneys for Defendant D. Campbell.

29 And thereafter to-wit on the 5th day of June, 1913, the same being a regular day of the March, 1913, term of said District Court of Seminole County, Oklahoma, the said cause came on for hearing, when the following proceedings were had to-wit:

Be it known that on this 5th day of June, 1913, the same being a regular day of the March, 1913, term of the District Court of Seminole County, State of Oklahoma, said court was opened in regular form, and the Hon. Tom D. McKeown, Judge, was present and presiding, and Henry Moore, Sheriff, and R. H. Chase Clerk of said Court, and J. B. Gilbreath, Official Court Reporter, were present, when the following among other proceedings were had, to-wit case No. 2014, styled Annie Wadsworth, et al., vs. George C. Crump, et al., was called for hearing, the plaintiffs being represented by their attorneys, J. S. Severson, and the defendant D. Campbell being represented by his attorneys Davis & Davis, whereupon the plaintiffs presented to the court the notice and proof of publication against the unknown heirs of Louis Cox, deceased, which said notice and proof of publication was by the court duly approved, and said Davis & Davis in open court verbally disclaimed any interest for the defendant, C. R. Home, and the plaintiff produced the summons showing due and proper personal service against the defendant, R. D. Milton, and asked the court to have said defendant called whereupon the said

defendant was three times solemnly called to come into court and came not but made default and it appearing that no answer or other pleading had been filed by him or any one for him he was adjudged in default, and the unknown heirs of Louis Cox, deceased, were three times solemnly called to come into court came not but made default whereupon they and each of them were adjudged to be in default, whereupon the plaintiffs and said defendant D. Campbell waived a jury and submitted the case before the Hon. Tom D. Mc-
30 Keown, District Judge, without the intervention of a jury upon the agreed statement of facts filed in said case, which said agreed statement of facts is in the words and figures as follows, to-wit:

STATE OF OKLAHOMA,
Seminole County, ss:

In the District Court.

No. 2014.

ANNIE WADSWORTH et al., Plaintiffs,

vs.

GEORGE C. CRUMP et al., Defendants.

Agreed Statement of Facts.

The plaintiffs appearing by their attorney, J. S. Severson, and the defendants appearing by their attorney, B. F. Davis, waive a jury in said cause and agree that the court may determine the issues thereof on the following agreed statement of facts, to-wit:

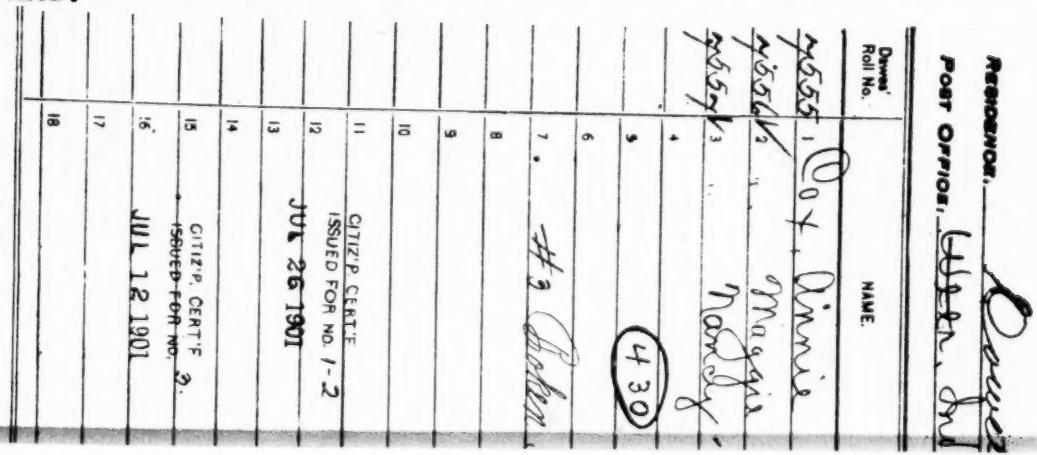
1st. That the land in controversy was set apart by the government of the United States as the distributive share of Louis Cox, who appears on the final rolls of the Seminole Tribe of Indians as a member of said Tribe, opposite roll No. 1721.

2nd. That the said Louis Cox died intestate on July 4th, 1901, and before selecting his allot*t*ment and before the said allot*t*ment, being the land above described, was set apart by the Government of the United States as his distributive share of the communal property of said Seminole Tribe of Indians.

3rd. That at the time of his death he was lawfully married to one Annie Cox, now Annie Wadsworth, one of the plaintiffs herein, and as issue of said marriage he was survived by his two daughters, Maggie Cox, who is now Maggie Beamore, and Nancy Cox, who is now the plaintiff Nancy Alexander; that his said wife and two daughters, the plaintiffs herein, are members of the Creek Tribe of Indians and duly enrolled opposite Creek Indian Roll- Nos. 7555, 7556, and 7557, respectively; that no conveyance has ever been made by said plaintiffs to any one.

Department of the Interior, Commission to the Five Civilized Tribes. Muskogee, Oklahoma.

This is to certify that I am the officer having custody of the records pertaining to the enrollment of the members of the Choctaw, Chickasaw, Cherokee, Creek and Seminole Tribes of Indians and the disposition of the land of said tribes, and that the above and foregoing is a true and correct copy of Creek Indian census card No. 2523. Apr.5,1913.
J. G. Wright, Commissioner to the Five Civilized Tribes,
By T. C. Humphry, Jr., Clerk in charge of Creek Records.
C.H.D.



Wewoka Okla
Ind. Terr.

Creek Nation. Indian Roll.

CARD NO. 2523
FIELD NO. 2550

	Relationship to Person first Named.	AGE	SEX.	BLOOD.	TRIBAL ENROLLMENT. Year.	Town	No.	TRIBAL ENROLLMENT OF PARENTS. Name of Father.	Year.	Town	Name of Mother.	Year.	Town
[illegible]		40	F	Full	1890	Muskogee	Page 214	Joe Kernal	Dead	Low Rich Tulsa	Nancy Kernal	Dead	Muskogee
[illegible]	D	20	"	1/2	1890	"	214	Lewis Cox		Seminole	No 1		
[illegible]	"	17	"	1/2	1890	"	214	" "			No 1		
30			257		# 2	Wewoka							
[illegible] Grant					Enrolled of No Cards No B (after 26-06) Card 1482								
					No 1 on 1895 Pay Roll No 398								
					" 2 " 1895 " " " 399								
					" 3 " 1895 " " " 400								
					" 4 " 1890 Roll as Magie Cox								
					Nos. 1, 2 and 3								
					ENROLLMENT OF NOS. 2555-2557 inc. HEREON APPROVED BY THE SECRETARY OF INTERIOR March 28. 1902								
					3-21-05 # 3 now in Willie Alexander at Fry								

Date of Application for Enrollment
May 18. 1901

This is to certify that I am the officer having custody of the records pertaining to the enrollment of the members of the Choctaw, Chickasaw, Cherokee, Creek and Seminole Tribes of Indians, and the disposition of the lands of said tribes, and that the above and foregoing is a true and correct copy of Seminole Indian census card No. 528.

Muskogee, Oklahoma,
March 30, 1911.

J. George Wright, Commissioner to the Five Civilized Tribes. By W. H. Angell, Clerk in charge of Seminole Records.

Residence CREEK NATION

Post Office ~~Tulsa~~ Coweta Ind. Ter.

SEMINOLE NATION

DAWES' ROLL No.		NAME	Relationship to Person First Named	AGE	SEX	BLOOD	TRIBAL ENROLLMENT YEAR	Band	No.	NAME OF FA
1721	1	Cox, Louis		45	M	1/2	1897	Nutchcup Harjo	243	Don't Kno
	2									
	3									
	4									Reported de
	5									"Wife and f
	6									
	7	Enrollment of No. 1721 hereon approved by the Secretary of the Interior April 2, 1901.								
	8									
	9									
	10									
	11									
	12									
	13									
	14									
	15									
	16									
	17									
	18									

Blank No. 698
2M-9-14-14

SEMINOLE NATION SEMINOLE ROLL

Card No. 528

Field No. 528

OD	TRIBAL ENROLLMENT YEAR	Band	No	NAME OF FATHER	TRIBAL ENROLLMENT OF PARENTS YEAR	Band	NAME OF MOTHER	YEAR	Band
2	1897	Nutchcup Harjo	243	Don't Know	Dead	White non Citz.	3096	Dead	Thos Palmer
				Reported dead 8/29/01					
				"Wife and family Creeks"					

4th. It is further stipulated that the only Seminole relative
31 surviving Louis Cox was one Lucy Wildcat, whose name appears upon the approved Seminole Roll opposite Roll No. 400, and under whom the defendants claim title by virtue of divers conveyances.

Witness our hands this 8th day of April, 1913.

J. S. SEVERSON,
Attorney for Plaintiffs.
B. F. DAVIS.
Attorney for Defendants.

Endorsed: Filed June 5th 1913.

Together with a certified copy of Creek Indian Census Card No. 2523, showing the enrollment of all of the plaintiffs in this case, and Seminole Census Card No. 528 showing enrollment of said Louis Cox, for the purpose of showing their age, which is as follows, to-wit:

(Here follow two blank forms marked pages 32 and 33.)

34 And after duly considering the said exhibits and the agreed statement of facts and after argument of counsel and being fully advised the court finds: the issues against the plaintiffs and for the defendant, and that under the Seminole Agreement, 31 Stat. L. 250, relative to de-cent and distribution of said Nation in force at the demise of said Louis Cox, deceased, whose allot*t*ment is in controversy in this case, no one but enrolled Citizens of the Seminole Nation could inherit.

It is therefore ordered, adjudged and decreed by the court that the petition of the plaintiffs be dismissed and that the title to said lands in the defendant, D. Campbell, be quieted, from which order and findings and judgment of the court the plaintiffs except and filed their motion for a new trial, which is in the words, as follows, to-wit:

STATE OF OKLAHOMA,
Seminole County, ss:

In the District Court.

No. 2014.

ANNIE WADSWORTH et al., Plaintiffs,

vs.

G. C. CRUMP et al., Defendants.

Motion for New Trial.

Comes now the plaintiffs, Annie Wadsworth, Maggie Beamore, and Nancy Alexander, and moves the court to set aside the verdict and judgment this day rendered against them and grant them a new trial for the following reasons, which materially effect the substantial rights of said plaintiffs:

First. Said judgment is not sustained by evidence in the agreed statement of facts.

Second. Said judgment is contrary to law.

Wherefore, they move that said judgment be set aside and a new trial granted.

J. S. SEVERSON,
Attorney for Plaintiffs.

35 Endorsed: No. 2014. Annie Wadsworth et al., vs. G. C. Crump et al. Motion for New Trial. Filed in open court, Seminole County, State of Oklahoma, Jun- 5, 1913. R. H. Chase, District Clerk.

And said motion to vacate and set aside said judgment, order and findings and decree of the court was by the court duly heard, and being fully advised the court overrules the same, and so doth decree, to which ruling of the court the plaintiffs except and pray an appeal

to the Supreme Court of the State of Oklahoma, which appeal is by the court granted, and said plaintiffs are given 30 days in which to file an appeal bond in the sum of $50.00 to be approved by the Clerk of this court, and nin-ty days (90) in which to prepare and serve case made, and 10 days thereafter to suggest amendments, and to be settled upon 5 days' notice, petition in error to be filed in the Supreme Court in 150 days from June 5th, 1913.

36 And thereafter, to-wit: on the 20th of September, 1915, the said Supreme Court of the State of Oklahoma, made and entered the following order, to-wit:

Supreme Court, July Term, 1915, Twentieth Judicial Day, September 20th, 1915.

5667.

ANNIE WADSWORTH et al.

vs.

G. C. CRUMP et al.

And now on this day the above cause is submitted on the record and briefs filed herein.

And thereafter, on the 19th day of October, 1915, the said Supreme Court of the State of Oklahoma, made and entered its order and decree affirming said judgment in said cause, the journal entry thereof being in the following words, to-wit:

Supreme Court, October Term, 1915, October 19th, 1915, Seventh Judicial Day.

5667.

ANNIE WADSWORTH et al.

vs.

J. W. CRUMP et al.

And now this cause comes on for final decision and determination by the court upon the record and briefs filed herein.

And the Court having considered the same finds that the judgment of the court below in the above cause should be affirmed.

Opinion by Mathews, C.

By the Court: It is so ordered, the opinion herein is hereby adopted in whole, and judgment is entered accordingly.

The said opinion by Mathews, C., in said cause, rendered and filed said day, is in the words and figures following, to-wit:

37 In the Supreme Court of the State of Oklahoma.

No. 5667.

ANNIE WADSWORTH et al., Plaintiffs in Error,

vs.

GEORGE C. CRUMP et al., Defendants in Error.

Louis Cox, a Seminole citizen, died on July 4, 1901, before selecting his allot/ment. His surviving widow was a Creek, and she and their two children were duly enrolled as Creek citizens. Held, under the act of Congress known as the Seminole Supplemental Treaty, passed and approved June 2, 1900, c. 610 (31 U. S. Stat. L. 250), the allot/ment in the Seminole Nation set apart by the government as the distributive share of the said Louis Cox did not descend to his said widow or children, for the reason that under the terms of the act above referred to his allot/ment could descend to his heirs only who were Seminole citizens.

Commissioners' Opinion, Division No. 4. Error from District Court, Seminole County; Tom D. McKeown, Judge.

Action by Annie Wadsworth and others against George C. Crump and others. Judgment for defendants, and plaintiffs bring error. Affirmed.

J. S. Severson, of Broken Arrow, for plaintiffs in error.
Davis & Patterson, of Wewoka, for defendants in error.

MATHEWS, *C.*:

This action was instituted by plaintiffs in the District Court of Seminole County and submitted to the court upon the following agreed statement of facts:

"*Agreed Statement of Facts.*

"The plaintiffs appearing by their attorney, J. S. Severson, and the defendants appearing by their attorney, B. F. Davis, waive a jury in said cause, and agree that the court may determine the issues thereof on the following agreed statement of facts, to-wit: (1) That the land in controversy was set apart by the government of the United States as the distributive share of Louis Cox, who appears on the final rolls of the Seminole Tribe of Indians as a member of said Tribe, opposite roll No. 1721. (2) That the said Louis Cox died intestate on July 4th, 1901, and before selecting his allot/ment, and before said allot/ment, being the land above described, was set apart by the government of the United States as his distributive share of the communal property of the Seminole Tribe of Indians. (3) That at the time of his death he was lawfully married to one Annie Cox,

now Annie Wadsworth, one of the plaintiffs herein, and as issue of said marriage he was survived by his two daughters, Maggie Cox, who is now the plaintiff Maggie Beamore, and Nancy Cox, who is now the plaintiff Nancy Alexander; that his said wife and two daughters, the plaintiffs herein, are members of the Creek Tribe of Indians, and duly enrolled opposite Creek Indian Roll Nos. 7555, 7556, and 7557, respectively; that no conveyance has ever been made by said plaintiffs to any one. (4) Its is further stipulated that the only Seminole relative surviving Louis Cox was one Lucy Wildcat, whose name appears upon the approved Seminole roll opposite roll No. 400, and under whom the defendants claim title by virtue of divers conveyances."

The court found the issues against the plaintiffs and for the defendant, and that under the Seminole Agreement, 31 Stat. L. 250, relative to de-cent and distribution of the said Nation in force at the demise of the said Louis Cox, deceased, whose allotment is in controversy in this case, no one but citizens of the Seminole Nation could inherit a Seminole citizen's allotment from the allottee.

The only question here presented is whether or not the plaintiffs in error, who are the legal widow and the only two surviving children of the decedent, Louis Cox, a duly enrolled citizen of the Seminole Nation, his said widow being a duly enrolled Creek citizen, and their said two children being also enrolled as Creek Citizens, the said Louis Cox having died before his allotment was made, can inherit the land allotted to said Louis Cox out of the lands of the Seminole Nation. The decision in the case rests upon the construction of the act of Congress known as the Supplemental Seminole Treaty passed and approved the 2nd day of June, 1900, (31 U. S. Stat. L. 250), in reference to the enrollment of members of the Seminole Tribe of Indians and the descent and distribution of their property under certain conditions, which, omitting the introductory and concluding parts, consists of two sections as follows:

"First. That the Commission to the Five Civilized Tribes, in making the rolls of Seminole Citizens, pursuant to the act of Congress approved June twenty-eighth, eighteen hundred and ninety-eight, shall place on said rolls the names of all children born to Seminole citizens up to and including the thirty-first day of December, eighteen hundred ninety-nine, and the names of all Seminole citizens then living, and the rolls so made, when approved by the Secretary of the Interior, as provided in said act of Congress, shall constitute the final rolls of Seminole citizens upon which the allotment of lands and distribution of money and other property belonging to the Seminole Indians shall be made, and to no other persons.

"Second. If any member of the Seminole Tribe of Indians shall die after the thirty-first day of December, eighteen hundred and ninety-nine, the lands, money, and other property to which he would be entitled if living shall descend to his heirs who are Seminole citizens, according to the laws of de-cent and distribution of the state of Arkansas, and be allotted and distributed to them accordingly; provided that in all cases where such property would de-cend to the

parents under said laws the same shall first go to the mother instead of the father, and then to the brothers and sisters, and their heirs, instead of the father."

Defendants contend that these two sections have already received a settled construction by this court in the cases of Bruner et al., v. Sanders et al., 26 Okla. 673, 110 Pac. 730; and Helicker-Jarvis Seminole Co. v. Lincoln et al., 33 Okla. 425, 126 Pac. 723, while the plaintiffs contend that the question as to whether or not the children of a Creek Woman, they being also Creek allottees, are prohibited from inheriting the allotted lands of their father, he being a Seminole citizen, was not decided in the above cases. In the case of Bruner v. Sanders, supra, the facts were on all fours with the case at
39 bar, with the one exception that the allottee received his allotment before his death, while in the case at bar the allottee died before allotment was made. The court in that case laid down the law of this case. It might perhaps be said that the law laid down in that case was dictum as far as it covers the point involved in the case at bar, which is perhaps true; but, even though it be dictum, an examination of the statute construed leads us to conclude that it is a correct statement of the law. In that case, the court had under consideration the construction of the statute now under consideration here, and used the following language:

"The trial court took the view of this statute that it is not a general statute of de-cent and distribution, but a special statute, applicable only to the property of enrolled members of the Seminole Tribe of Indians who die subsequent to the 31st day of December, 1899, whose property, if lands, had not been allotted to the Indian, or, if other property, had not been distributed to him at the time of his death. In this construction of the statute by the trial court we concur."

From the syllabus of that case we take this excerpt:

"Section 2 of the Act of Congress approved June 2, 1900, entitled 'An act to ratify an agreement between the Commission to the Five Civilized Tribes and the Seminole Tribe of Indians' (Act June 2, 1900, c. 610, 31 Stat. 250), control- the de-cent of land to which a duly enrolled member of the Seminole Tribe of Indians who died after the 31st day of December, 1899, before receiving his allotment, is entitled."

This court, in the case of Bruner v. Sanders, supra, having correctly decided, we think, that the act of Congress, approved June 2, 1900, (chapter 610, 31 Stat. 250), applies to the facts presented in the case at bar, the question next for determination is whether or not this statute excluded the children of a Seminole citizen by a Creek woman, who were also enrolled as Creeks, from inheriting his allotted lands. The act under consideration says that such property "shall de-cend to his heirs who are Seminole citizens." Who are Seminole citizens as here designated? Section 1 of the act set out above provides for the enrollment of the Seminole citizens and says that in making out this roll the names of all citizens living on the 31st day of December, 1899, and all the children born to Seminole citizens up to that date, shall constitute the final rolls

of Seminole citizens. In section 21 of the Original Curtis Act, (Act Cong. June 28, 1898, c. 517, 30 Stat. 502), which provided for the enrollment of the citizens of the Five Civilized Tribes, which included the Seminole Nation, there is a provision which reads as follows:

"The rolls so made, when approved by the Secretary of the Interior, shall be final, and the persons whose names are found thereon, with their de-cendants thereafter born to them, with such persons as may intermarry according to the tribal laws, shall alone constitute the several tribes which they represent."

From the reading of these two sections last above set out it plainly appears that neither the widow of the decedent, Louis Cox, not their two children, can be denominated "Seminole citizens." The widow undoubtedly is not so included because she is of the Creek blood and a citizen of that tribe, and the two children are excluded because they were born before December 31, 1899,
40 and were not enrolled as Seminole citizens, and thus do not come within the provisions defining Seminole citizens.

It does not follow, if the children had been born after December 31, 1899, that even then they could have inherited the allotment in controversy. The defendants have presented the additional proposition here that, according to the custom of the Seminole Nation, the blood of the mother determined the tribe to which the offspring belonged, and the fact that the children, plaintiffs here, were not enrolled as Seminole citizens was not due to any neglect of the parents of the said children or the Commission to have said children enrolled on the Seminole roll, but the law and the custom of the Seminole Tribe were that the children were of the blood of the mother and members of that tribe to which the mother belonged. While we do not find it necessary to pass upon this proposition, and will leave it, as far as this opinion is concerned, an open question, yet we will say that as far as our investigation has lead us, we are of the opinion that this last proposition is a correct statement of the law so far as it applies to the facts as presented in the case at bar.

The Judgment should be affirmed.

Per Curiam:

Adopted in whole.

41 And thereafter, on the 16th day of November, 1915, the said Supreme Court of the State of Oklahoma, made and entered the following order, journal entry of which is in the words and figures following, to-wit:

Supreme Court, October Term, 1915, November 16th, 1915, Twenty-second Judicial Day.

5667.

ANNIE WADSWORTH et al.

vs.

G. C. CRUMP et al.

And now on this day it is ordered by the court that leave be and the same is hereby granted to file petition for rehearing out of time, and the mandate of this court in the above cause be stayed pending said petition for rehearing.

Said petition for rehearing, for which leave was granted to file out of time by the above order, is in the words and figures following, to-wit:

42 In the Supreme Court of the State of Oklahoma.

No. 5667.

ANNIE WADSWORTH et al., Plaintiffs in Error,

vs.

J. W. CRUMP, Defendant in Error.

Comes now the petitioners by their attorney, J. S. Sevenson, and files this their petition for rehearing of the above cause and for cause thereon alleges and states:

1st. That heretofore on the 19th day of October, 1915, opinion was duly filed in said cause by Commissioner Mathews of the Commissioners, Division No. 4, in which said matter was decided adversely to said petitioners, upon the interpretation as placed by said Commissioners on the Congressional Statutes governing de-cent of lands and other property of the Seminole Indians. And your petitioner would state that the only reason they have to offer for not filing said petition for rehearing within fifteen (15) days as prescribed by the rules of this court is the following: Said petitioners, nor the counsel had no official notice of the rendering of said opinion in time to enable them to file said petition within said time. Petitioners further state that while said opinion has been adopted by this court and while mandate has been forwarded to the court below, the said mandate has not yet been spread of record in said court below.

2nd. Your petitioner would show in support of this petition for rehearing, that since the rendition of said judgment the case of Cook v. Cook, being No. — has been decided by this court, opinion being written by Justice Hardy, in which the same question, or

a question decisive of this question has been duly settled by this court, and that the opinion herein is in direct conflict with said control-ing decision, and that the attention of the court was not called to said control-ing decision either in the brief or oral argu-
ment and has been overlooked by the court. The decisive
43 question overlooked is in substance as follows; In the case of Cook v. Cook, No. —, not yet officially reported the court holds that under the Choctaw Statute a widow is entitled to dower in the estate of her husband even though the said land had not been selected by said husband prior to his death, and that the hypothetical question discussed in said opinion is that this said rule would obtain even though the widow were a non-citizen of the tribe: The laws of Arkansas as put for being control-ing and decisive as to the said de-cent: That the question involved in this case is identical with that, in this, that the marriage of the plaintiff to the deceased Lewis Cox, whose allot/ment is in controversy, was not questioned but admitted by all parties and the only question upon which the court erred in rendering said opinion was to the extent and for the sole reason that said Commissioners' Court held by reason of the fact that said widow was not a Seminole citizen, she would not be entitled to an estate of dower in said lands, so allotted to the heirs of her said deceased husband subsequent to his death.

3rd. Your petitioner further states that a great and irreperable injury will result to said widow in case said mandate is not recalled, said cause re-submitted and opinion rendered therein in accordance with the opinion of this court, set out in the case of Cook v. Cook, No. —.

Wherefore, petitioners pray that said mandate be recalled and that said cause be re-assigned for further hearing.

J. S. SEVERSON,
Attorney for Plaintiffs in Error.

Filed Nov. 15, 1915. William M. Franklin, Clerk.

44 And thereafter, on the 25th day of January, 1916, the said Supreme Court of the State of Oklahoma, denied the said foregoing petition for rehearing filed in said cause by said Plaintiffs in Error, the journal entry of the order of court so made and entered being in the words and figures following, to-wit:

Supreme Court, January Term, 1916, Eleventh Judicial Day, January 25, 1916.

5667.

ANNIE WADSWORTH et al.

vs.

G. C. CRUMP et al.

And now on this day it is ordered by the court that the petition for rehearing filed herein, be, and the same is hereby denied.

45 And thereafter, to-wit, on the 21st day of March, 1916, the said Supreme Court of the State of Oklahoma, made and entered the following order, judgment and decree in said cause, the journal entry of which is in the words and figures following, to-wit:

Supreme Court, January Term, 1916, March 21st, 1916, Forty-First Judicial Day.

5667.

ANNIE WADSWORTH et al.

vs.

J. W. CRUMP et al.

And now on this day it is ordered by the court that leave be, and the same is hereby granted to file 2nd petition for rehearing, the mandate of this court heretofore issued herein is hereby recalled, and stayed.

5667.

ANNIE WADSWORTH et al.

vs.

J. W. CRUMP et al.

And now this cause comes on for final decision and determination by the court upon the record and briefs filed herein.

And the court having considered the same finds that the judgment of the trial court in the above cause should be reversed and the cause remanded with instructions.

It is therefore ordered and adjudged by the court that the former opinion filed herein by the Supreme Court Commission be withdrawn, and the judgment of the trial court in the above cause be, and the same is hereby reversed and the cause remanded with instructions to render judgment in favor of plaintiffs in error in accordance with the opinion herein.

Opinion by Hardy, J. All the Justices concur.

The said opinion reversing and remanding, so made and filed in said cause, is in the words and figures following, to-wit:

46 Filed Mar. 21, 1916. William M. Franklin, Clerk.

In the Supreme Court of the State of Oklahoma.

No. 5667.

ANNIE WADSWORTH et al., Plaintiffs in Error,

vs.

GEORGE C. CREMP et al., Defendants in Error.

1. The purpose of preparing the rolls of Seminole Citizens required by Section 2 of the Seminole Agreement approved by Act of Congress of June 2, 1900, was to ascertain the number and identity of Seminoles entitled to share in the allotment of the tribal lands and monies and other property belonging to the Seminoles as a tribe.
2. Section 2 of said agreement regulates the devolution of lands to which a duly enrolled Seminole citizen would have been entitled if living, where such citizen dies before receiving the same.
3. In such case the property of the deceased goes to his heirs who are themselves Seminole citizens according to the laws of descent and distribution of the State of Arkansas, subject to the proviso contained in said section.
4. The word "citizen" as used in section 2 of said agreement is not limited to persons whose names are found on the rolls prepared under section 1. Citizenship in the Seminole tribe did not necessarily extend to or invest in the citizen a personal or individual interest in the common or undivided property of the tribe, but might exist independent of any right to participate in the distribution of tribal property.
5. C., a duly enrolled Seminole Indian, died July 4, 1901, before receiving his allotment, leaving him surviving a widow and two daughters who had been enrolled as Creeks. Held: that the daughters were heirs of their deceased father under section 2 of the Seminole Agreement approved by Act of Congress June 2, 1900, and inherited the lands to which their father was entitled to the exclusion of more distant relations, though enrolled as Seminoles.
6. The surviving widow of a duly enrolled Seminole citizen who died July 4, 1901, before receiving his allotment, is entitled to dower therein, where said lands are afterwards selected.

Error from the District Court of Seminole County.

Hon. Tom D. McKeown, Judge.

Reversed and remanded with directions.

47 On Rehearing.

J. S. Severson, Attorney for Plaintiffs in Error.
David & Patterson, Attorneys for Defendants in Error.

Opinion of the Court.

By HARDY, *J.*:

Plaintiffs in error, who were plaintiffs in the trial court, brought this action against defendants in error as defendants, to recover certain lands that had been set apart as the distributive share of the lands of the Seminole Tribe, of Lewis Cox, a duly enrolled full blood Seminole citizen, who died intestate on July 4, 1910, before selecting his allotment. At the time of his death he was lawfully married and was survived by his wife, Annie and two daughters, Maggie Beamore and Nancy Alexander, who are the plaintiffs herein.

The only question presented is whether plaintiffs as the widow and surviving children of Lewis Cox, deceased, are entitled to recover the lands allotted in his name. Plaintiffs are enrolled as Creek citizens.

On June 2, 1900, Congress approved an agreement, with the Seminole Tribe, sections 1 & 2 of which are as follows:

"First. That the Commission to the Five Civilized Tribes, in making the rolls of Seminole citizens, pursuant to the Act of Congress approved June twenty-eight, eighteen hundred and ninety-eight, shall place on said rolls the names of all children born to Seminole citizens up to and including the thirty-first day of December, eighteen hundred and ninety-nine, and the names of all Seminole citizen then living; and the rolls so made, when approved by the Secretary of the Interior, as provided by said act of Congress, shall constitute the final rolls of Seminole citizens, upon which allotment of lands and distribution of money and other property belonging to the Seminole Indians shall be made, and to no other persons."

"Second. If any member of the Seminole Tribe of Indians shall die after the thirty-first day of December, eighteen hundred and ninety-nine, the lands, money, and other property to which he would be entitled if living, shall descend to his heirs who are Seminole Citizens, according to the laws of descent and distribu-
48 tion of the State of Arkansas, and be allotted and distributed to them accordingly; Provided, that in all cases where such property would descend to the parents under said laws the same shall first go to the mother instead of the father, and then to the brothers and sisters, and their heirs, instead of the father.

Upon the construction of these provisions depends the correct determination of this case. It should be borne in mind that the result which Congress intended to secure was the allotment in severalty of the tribal lands and the distribution of other tribal property, and moneys held by the Seminole Indians as a tribe and the preparation of the roll provided for by the above legislation was to determine

the number of individual Indians entitled to share in the distribution of such tribal property, so that a basis could be found upon which to make such distribution.

Section 1, supra, directed the Commission to place upon the rolls of Seminole citizens the names of all children born to Seminole citizens up to and including the 31st day of December, 1899, and the names of all Seminole citizens living on that date, and provided that the roll so made when approved by the Secretary of the Interior, should constitute the final roll of Seminole citizens, upon which the allotment of lands and distribution of money and other property belonging to the Seminole Indians should be made, and excluded from participation in such distribution all other persons. By this provision it was the duty of the Commission to enroll plaintiffs Maggie Beamore and Nancy Alexander, as it is admitted that they were the children of Lewis Cox, and were born prior to the 31st day of December, 1899, and had they been placed upon said roll, would have been entitled to an allotment of tribal lands and a distributive share of other tribal property.

Section 2 provided that should any member of the Seminole Tribe die after the 31st day of December, 1899, the lands, money and other property to which he would be entitled if living, should descend to his heirs, who were Seminole citizens, according to the laws of descent and distribution of the State of Arkansas with the proviso that in all cases where such property would descend to the parents under the Arkansas law, the same should first go to the mother instead of the father, and then to the brothers and sisters and their heirs instead of the father. This section was held not to apply to that character of lands where the allotment was selected in the lifetime of the allottee, and was held to apply only to cases like the present. Brunder v. Sanders, 26 Okla. 673, 110 Pac. 730; Heliker-Jarvis Seminole Co. vs. Lincoln, 33 Okla. 125, 156 Pac. 723.

49

It is seen that by section 2, lands of the character here involved were to descend to the heirs who were themselves Seminole "citizens" according to the rule of descent prescribed by the Arkansas law. To correctly determine what individuals were entitled to take the lands involved, we must ascertain the meaning of the word "citizen" as contained in section 2, regulating the descent thereof. It is argued that because the names of the children were not placed on the Seminole rolls therefore they are not Seminole citizens, and not entitled to inherit the property of their deceased father, and the decisions of this court, supra, are cited in support thereof. The principle here involved was not presented or decided in either of those cases. Is it essential in order for plaintiffs to come within the meaning of the term "citizen" and to inherit the lands of their father, that their names must appear on the rolls? We think not. The purpose of making the rolls was to ascertain the number and identity of those entitled to participate in their own right in the distribuion of tribal property, and this being the purpose of making said rolls, as expressed in section 1 of the act, supra, we should not extend the meaning thereof, unless it is clear it was the intention of the parties to the

agreement that such meaning should be given to the language
50 used. This could not be the intention in view of the fact that section 1 directed the names of all children born to Seminole citizens up to and including December 31, 1899, to be placed on the rolls, and here is a recognition of the fact that children situated as were these plaintiffs were not aliens and were not to be excluded from the inheritance of their fathers, but were to be recognized and provided for, notwithstanding previous tribal customs, which it is said the Commission had followed in enrolling plaintiffs as Creeks. The tribal existence was nearing its dissolution; the common property was about to be distributed, and provision was to be made governing the devolution of Seminole property, to which citizens were entitled where such citizens should die before receiving their share; provision having already been made for other classes of property. The Seminoles were one of the five civilized tribes, and had adopted many of the social habits and industrial customs and pursuits of the white race. The institution of marriage was recognized among them and the binding obligation of family ties were observed and they were subject to the same influences that prompted other civilized races to protect and provide for their spouse and off-spring, and it would require the most powerful and impelling reasons for us to hold, in view of these facts, which are well known, that it was the intention of these Indians to deliberately exclude from participation in the distribution of the property of an individual Indian his own flesh and blood and those who bore him the closest relations that can exist in civilized communities.

The word "citizen" as used in the legislation of Congress respecting the Indians of the Five Civilized tribes, (and this agreement is but legislation of that character) does not necessarily include the right to share in the distribution of tribal property. The court of
Claims, in Whitmire, Trustee, vs. Cherokee Nation, 30
51 Court Claims Report 152, said:

"The idea therefore existed both in the mind and in the laws of the Cherokee people that citizenship did not necessarily extend to or invest in the citizen as a personal or individual interest in what the Constitution termed the 'common property,' the 'lands of the Cherokee Nation,'"

And again, in the same case, in discussing the status of certain classes of persons that had been admitted to citizenship in the tribe it was said:

"It was no more thought that these strangers would be admitted to share in the unoccupied lands of the Cherokees than in their cultivated fields. To allow them to dwell within their territory and vote and be called Cherokee citizens and enjoy political rights was one thing; to give them an equal share with themselves in their own exclusive, though undivided, property, was another."

In Stephens v. Cherokee Nation, 174 U. S. 445, 43 L. Ed. 1041, the Supreme Court of the United States, in discussing legislation of Congress in reference to winding up tribal affairs of the Five Civilized Tribes, said:

"It may be remarked that the legislation seems to recognize, especially the act of June 28, 1898, a distinction between admission to citizenship merely and the distribution of property to be subsequently made, as if there might be circumstances under which the right to share in the latter would not necessarily follow from the concession of the former."

And the same thought was in the mind of the Court in the case of Redbird v. U. S., 203 U. S. 76, 51 L. Ed. 96, where the Supreme Court, after calling attention to the distinction between different classes of citizens in the Cherokee Nation, which was discussed by the Court in that case, said:

"And the same distinction between citizens as such and citizens with property rights has also been recognized by Congress in enacting laws relating to other Indians than the Five Civilized Tribes. Act August 9, 1888, 25 Stat. L. 392, c. 818; Act May 2, 1898 26 Stat. L. 96, c. 182; Act June 7, 1897, 30 Stat. L. 90, c. 3."

Thus the right to share in the distribution of tribal property is not essential to citizenship, nor does the fact that one has been omitted from the tribal rolls, though he is thereby deprived of his right to share in the distribution of such tribal property, also exclude him from all the other rights and privileges of citizenship. Lamb v. Baker 27 Okla. 739, involved a construction of section 6 of the Act of Congress, approved June 30, 1902, and known as
52 the Supplemental Creek Agreement, whereby it was provided that only citizens of the Creek Nation, male and female, and their Creek descendants should inherit lands of the Creek Nation, and in the event there were no persons of Creek citizenship to take by descent, the inheritance might then go to non-citizens; and construing that provision it was held where a Creek citizen died, leaving surviving him certain heirs who had been enrolled as Seminole citizens, yet, who were possessed of Creek blood, they were entitled to take the inheritance in preference to relatives more distan-ly related, though enrolled as Creek citizens. This principle was adhered to in the case of Hughes Land Co. et al. v. Bailey et al., 30 Okla. 194, 120 Pac. 290.

It is urged that the Commission in enrolling plaintiffs followed the tribal custom whereby the children of a Seminole marriage followed the blood of their mother and therefore took the citizenship of the mother, under which custom if the mother were not a Seminole the children were excluded from citizenship in the Seminole tribe. If the word "citizen be given the meaning which counsel contend should be given it would have the effect of making the rolis contain evidence of citizenship in the Seminole Nation, for all purposes and where a Seminole citizen duly enrolled and entitled to an allotment, died before receiving it, same could only be inherited by those whose names were on the tribal rolls, and this would operate to exclude children born after December 31, 1899, even though both parents be full blood Seminole Indians; because Section 1 excludes from enrollment all children born after that date. Likewise, if children born before that date to full blood Seminoles, for some

cause were omitted from the rolls, they would be denied inheritance from their parents, and the allotments of the parents would go to the collateral kindred, where the parents died before receiving the same; so also the wife of any Seminole citizen, whether married before or after December 31st, 1899, would have no interest in the allotment of her husband and would be incapable of inheriting from
53 her children should such children die after enrollment and before receiving their allotment, unless her name appeared on the Seminole rolls. We cannot believe this result was intended when a different rule applies in cases where the allotment was selected during the lifetime of the allottee; neither does the fact that plaintiffs are enrolled as Creeks add any force to defendant's contention. It is a matter of history that the Seminole Tribe are closely related to the Creek Indians, and marriage between the members of the two tribes have been common and by section 36 of the Original Creek Treaty, it was provided that Seminoles who settled in the Creek Nation might take allotments therein and that Creeks who settled in the Seminole Nation should be permitted to take allotments in that nation, when such provision had been ratified by both tribes. Whether it was in fact ratified we are not at this time informed, but this circumstance tends to show the relations existing between the two peoples, and excludes the idea that any special reason existed why plaintiffs and those similarly situated should be excluded from participation in the tribal affairs other than the original allotment, merely because they had been enrolled as Creeks.

The plaintiff Annie, the surviving widow of deceased, not being a citizen within the meaning of the legislation here under consideration, did not take any interest in the allotment of deceased as an heir, and the contention of defendants in error would be correct unless she be entitled to dower therein.

By Act of May 2, 1890, c. 53, Mans. Dig. of the Laws of Arkansas together with other general laws of that State, were extended over and put in force in the Indian Territory (Melton v. Lane, 29 Okla. 383, 118 Pac. 141; Burdette v. Burdette, 26 Okla. 416, 109 Pac. 922; Cury v. McDaniel, 33 Okla. 19, 124 Pac. 319); and it
54 has been held under this legislation that a widow was entitled to dower in the allotment of her deceased husband who was an Indian, and had selected an allotment in his lifetime. Hawkins vs. Stephens, 21 Okla. 849.

The question as to whether a widow was entitled to dower in the allotment of her deceased husband who was a duly enrolled Indian citizen, and who died before receiving his allotment was considered in Cook v. Childs, 152 Pac. 88. This case involved the construction of Section 22 of the Supplemental treaty with the Choctaws and Chickasaws, Act July 1, 1902, 32 Stat. L. 641; which provided that if any persons whose names appeared upon the rolls of those tribes should die subsequent to the ratification of that agreement and before receiving his allotment of lands, said lands should be allotted in his name and together with his share of other tribal property, descend to his heirs according to the laws of descent and distribution as contained in Chapter 49 of Mansfield's Digest of the Laws of Ar-

kansas, and it was held the surviving widow was entitled to dower in the allotment of her deceased husband where same had been selected as therein provided.

The provision- of section 22 of the Choctaw-Chickasaw Supplemental Agreement, are similar in language to Section 2 of the Seminole Agreement, here involved, and upon authority of that case, we hold that the plaintiff, Annie, as surviving widow of the deceased, Lewis Cox, is entitled to dower in the lands involved.

The former opinion herein by the Commission is withdrawn and the judgment of the trial court is reversed and this cause remanded with instructions to render judgment in favor of plaintiffs in error in accordance with this opinion.

(All the justices concur.)

55 And thereafter, on the 10th day of April, 1916, the said Defendants in error in said cause filed their petition for rehearing in said cause, which is in the words and figures following, to-wit:

56 In the Supreme Court of the State of Oklahoma.

No. 5667.

ANNIE WADSWORTH et al., Plaintiffs in Error,

vs.

GEORGE C. CRUMP et al., Defendants in Error.

Petition for Rehearing.

Comes now the petitioners by their attorneys, Davis & Patterson, and file this their petition for rehearing of the above cause and for reasons thereof, allege and state:

1. That on the 19th day of October, 1915, an opinion was duly filed in said cause by Commissioner Mathews of the Commissioners' Division #4, in which said cause was affirmed. That thereafter a petition for rehearing was filed by plaintiffs in error, which said petition, after the filing of the supplemental briefs, was heard and denied and said opinion was adopted by the Supreme Court of Oklahoma, and mandate sent down and the opinion was duly reported. That thereafter the defendants in error had no notice of any nature, character or kind, that any further proceedings were to be had in this case; that through some means unknown to these defendants in error, the said cause was heard by the Supreme Court proper, and after consideration thereof, an opinion written by Justice Hardy, the said cause was reversed and remanded and the mandate heretofore sent down in said cause was ordered withdrawn; that the first notice that these defendants in error had in such proceedings was by a newspaper — printed in an Oklahoma newspaper *report*, and they immediately ordered and paid for a copy of said opinion filed in said cause and now as soon thereafter as possible file this their petition for rehearing.

2. Defendants in Error aver that said opinion is erroneous in this that it gives a wrong interpretation to section two (2) of the Seminole Supplemental Treaty.

57 3. Defendants in error aver that said opinion wholly fails to consider the question of rule of property raised by defendant- in error in their brief in said cause and state that said section two of the Seminole Supplemental Treaty has had the consideration of this court in two decided cases, to-wit: Bruner vs. Sanders, 26 Okla. 673, 110 Pac. 730; Helicker-Jarvis Seminole Co. vs. Lincoln, 33 Okla. 426, 156 Pac. 723; that in said decided cases rendered some years prior to the rendition of the judgment in this cause in the District Court, the interpretation was given *on* said section that is contended for in this case by the defendant- in error; that said interpretation has been followed by the court for the last past several years and has become and is a rule of property so well and permanently established and followed in this jurisdiction that the same should not be abrogated by the Supreme Court.

4. That proper distinction and application of the case of Lamb vs. Baker, 27 Okla. 739, was not made with reference to the case at bar, that in said case the Court, in construing the language, "providing that only citizens of the Creek Nation, male and female, and their Creek de-cendants should inherit lands of the Creek Nation, and in the event that there are no persons of Creek citizenship to take by de-cent, the inheritance might go to non-citizens." The court said in substance that if it were not for the clause, "and their Creek descendants", the court would be compelled to hold that said section #6 would prevent all except those duly enrolled as Creeks on the approved Creek roll from inheriting lands in the Creek Nation.

5. That the court erred in this opinion in holding that Annie Wadsworth, the widow, would be entitled to dower in this land; that if the premises insisted on by the defendants in error herein are correct then the case of Cook vs. Childs, 153 Pac. 88, is not applicable, if the interpretation given by the defendants in error to Section Two of the Seminole Supplemental Agreement is adhered to then it would

58 exclude from participation in the estate of a deceased Seminole citizen who died prior to receiving his allotment, any member of his family who was not enrolled on the Seminole Rolls.

6. It is insisted by the defendants in error that the court drew an erroneous conclusion as shown in the language in the opinion, that "It is a matter of history that the Seminole Tribe are closely related to the Creek Indians, and marriage between the members of the two Tribes has been common and by section 36 of the Original Creek Treaty, it was provided that Seminoles who settled in the Creek Nation might take allotments therein and that the Creeks who settled in the Semmole Nation should be permitted to take allotments in that Nation, when such provision had been ratified by both tribes. Whether it was in fact ratified we are not at this time informed, but this circumstance tends to show the relation existing between the two peoples, and excludes the idea that any special reason existed why plaintiffs and those similarly situated should be excluded from par-

ticipation in the tribal affairs other than the original allotment, merely because they had been enrolled as Creeks."

This provision failed of ratification by the Tribes and is one of the reasons that the defendants in error insist that it was the intention of the Tribes and of Congress to place the construction on Section Two of the Seminole Supplemental Treaty insisted on in this case.

Wherefore, premises considered, the defendants in error pray this Honorable Court that they be granted a rehearing in this cause; that they may have a right to present their issues to this body since the same has gone to this court and been considered by it without their knowledge and without notice to them and that said cause be set for hearing on the 21st day of April, 1916, and that on that day they be permitted to present the same orally before this Court.

DAVIS & PATTERSON,
Attorneys for Defendants in Error.

STATE OF OKLAHOMA,
County of Tulsa, ss:

I hereby acknowledge service of notice of the hearing of the petition in the above entitled cause, by receiving a copy of the same on the 10th day of April, 1916.

J. S. SEVERSON.

59 The foregoing petition for rehearing filed by the said defendants in error in said cause is endorsed as follows: No. 5667. Annie Wadsworth, et al., Plaintiffs in Error, vs. Crump, et al., Defendants in Error. Petition for Rehearing. Davis & Patterson, Att'ys for Def'ts. Filed Apr. 10, 1916. William M. Franklin, Clerk.

And thereafter, on the 31st day of May, 1916, the said Supreme Court of the State of Oklahoma denied the said foregoing petition for rehearing filed in said cause by said defendants in error, the journal entry of the same being in the words and figures following, to-wit:

Supreme Court, April Term, 1916, May 31, 1916, Twentieth Judicial Day.

5667.

ANNIE WADSWORTH et al.

vs.

J. W. CRUMP et al.

And now on this day it is ordered by the court that the petition for rehearing filed herein be and the same is hereby denied.

60 In the Supreme Court of the State of Oklahoma.

No. 5667.

ANNIE WADSWORTH et al., Plaintiffs in Error,

vs.

GEORGE C. CRUMP et al., Defendants in Error.

Proof of Service.

STATE OF OKLAHOMA,
Tulsa County, ss:

I, Harry H. Rogers, of lawful age, being first duly sworn, on oath state that on the 28 day of Sept., 1916, I served the attached Præcipe for Transcript of Record in the above entitled cause, on J. S. Severson, attorney of record for the above named plaintiffs in error, by delivering to him, the said J. S. Severson, a true and correct copy of the same, on the said day last above mentioned.

Witness my hand this 30 day of October ,1916.

HARRY H. ROGERS.

Subscribed and sworn to before me this 30 day of October, 1916.

[Seal Frank Ingraham, Court Clerk, Tulsa County, Oklahoma.]

FRANK INGRAHAM,
Court Clerk, Tulsa County, State of Oklahoma.

61 In the Supreme Court of the State of Oklahoma.

UNITED STATES OF AMERICA,
State of Oklahoma, ss:

I, Wm. M. Franklin, Clerk of the Supreme Court of the State of Oklahoma, do hereby certify that the foregoing pages numbered 1 to 60, inclusive, are a true, correct, full and complete transcript of the record and proceedings, in the case of Annie Wadsworth, et al., plaintiffs in error, vs. George C. Crump, et al., defendants, No. 5667, in said Supreme Court, as indicated and requested by the præcipe of said parties filed with me as the Clerk of said Court, and also of the opinion of the Supreme Court of Oklahoma, rendered therein, as the same now appears on file in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court at my office in Oklahoma City, Oklahoma, this 15th day of November, 1916.

[Seal Supreme Court, State of Oklahoma.]

WM. M. FRANKLIN,
Clerk of the Supreme Court of the State of Oklahoma,
By N. C. ORR, *Deputy.*

Endorsed on cover: File No. 25,611. Oklahoma Supreme Court. Term No. 781. D. Campbell, plaintiff in error, vs. Annie Wadsworth, Maggie Beamore, and Nancy Alexander. Filed November 20th, 1916. File No. 25,611.

In the

SUPREME COURT OF THE UNITED STATES.

October Term, 1916.

D. CAMPBELL, - - - - - - ***Plaintiff in Error,***

vs.

ANNIE WADSWORTH, MAGGIE BEAMORE and NANCY ALEXANDER, - ***Defendants in Error.***

IN ERROR TO THE SUPREME COURT OF THE STATE OF OKLAHOMA.

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In the

SUPREME COURT OF THE UNITED STATES.

October Term, 1916.

No. 781.

D. CAMPBELL, - - - - - - *Plaintiff in Error,*

vs.

ANNIE WADSWORTH, MAGGIE BEAMORE and NANCY ALEXANDER, - *Defendants in Error.*

BRIEF *for* PLAINTIFF *in* ERROR.

IN ERROR TO THE SUPREME COURT OF THE STATE OF OKLAHOMA.

Abstract or Statement of Case.

This is a suit commenced in the District Court of Seminole County, State of Oklahoma, by the defendants in error, Annie Wadsworth, Maggie Beamore and Nancy Alexander who were plaintiffs below,

against the plaintiff in error, D. Campbell, who was defendant below, for the recovery of 120 acres of land in Seminole County, State of Oklahoma, described as the North Half of the Northeast Quarter and the East Half of the Northeast Quarter of the Northwest Quarter and the North Half of the Southeast Quarter of the Northeast Quarter, of Section 30, Township 10 North, Range 8 East, the allotment of Louis Cox, deceased, a citizen of the Seminole Tribe of Indians.

Louis Cox was a member and citizen of the Seminole Tribe of Indians, and was duly enrolled as such citizen by the Commission to the Five Civilized Tribes, opposite No. 1721 of the approved Seminole Rolls; and thereafter, on July 4, 1901, died intestate, before selecting or receiving his allotment of land as his distributive share of the communal property of the Seminole Tribe of Indians; and after his death, on June 28, 1902, the above described land was allotted and set apart from the tribal domain of said Seminole tribe by the Government of the United States as the allotment and distributive share of said Louis Cox, deceased; which selection and allotment was made at the instance and request of Lucy Wildcat, a citizen of the Seminole Tribe of Indians, enrolled upon the approved Seminole Rolls opposite Roll No. 400, a sister of said Louis Cox, de-

ceased, and his only surviving relative who was a Seminole citizen. And an allotment certificate was duly issued for said land by the Commission to the Five Civilized Tribes on June 28, 1902. (Rec., pp. 15-22.) On August 2, 1907, the said Lucy Wildcat duly sold and conveyed said land, as such sole heir of said Louis Cox, deceased, to George C. Crump, one of the defendants below, who on December 28, 1910, duly sold and conveyed the same to R. D. Milton, one of the defendants below, and said R. D. Milton on February 9, 1911, duly sold and conveyed said land to this plaintiff in error, D. Campbell. (Rec., pp. 18-19.

At the time of his death the said Louis Cox left surviving him his wife, Annie Cox, now Annie Wadsworth, and two daughters, the issue of said marriage, Maggie Cox, who is now Maggie Beamore, and Nancy Cox, who is now Nancy Alexander; who are the defendants in error herein, and who are all members and duly enrolled citizens of the Creek Tribe or Nation of Indians, duly enrolled as such opposite numbers 7555, 7556 and 7557, of the approved roll of the Creek Tribe of Indians. And as such Creek citizens, the said defendants in error each received their allotment of lands in the Creek Nation as their distributive share of the common domain of said Creek Tribe. (Rec., pp. 19-22.) This is the state

of facts in this case, and they involve the question: Who of said parties claiming to be heirs of said Louis Cox, deceased, inherited said land under the terms of section 2 of the Seminole Supplemental Treaty of October 7, 1899, ratified by Act of Congress, approved June 2, 1900, 31 Stat. L. 250, which provides as follows:

> " If any member of the Seminole Tribe of Indians shall die after the thirty-first day of December, eighteen hundred and ninety-nine, the lands, money and other property to which he would be entitled if living, shall descend to his heirs who are Seminole citizens, according to the laws of descent and distribution of the State of Arkansas, and be allotted and distributed to them accordingly: *Provided,* That in all cases where such property would descend to the parents under said laws the same shall first go to the mother instead of the father, and then to the brothers and sisters, and their heirs, instead of the father."

This question is raised by the pleadings, agreed statement of facts and exhibits thereto, entered into by the parties hereto in the court below, upon which the case was tried, and the judgments, decrees, orders and decisions below rendered, in the following manner, to-wit: In June, 1912, said Annie Wadsworth, Maggie Beamore and Nancy Alexander, as plaintiffs filed their petition in the District Court of

Seminole County, Oklahoma, against said D. Campbell, and others, as defendants, for the recovery of said land and for quieting title thereto, alleging that they are, respectively, the widow and daughters of said Louis Cox, deceased, and his sole heirs; that said Louis Cox was an enrolled Seminole Indian opposite Roll No. 1721, and that by virtue thereof there was allotted to him the said land; that said Louis Cox died intestate on the 4th day of July, 1901, leaving said plaintiffs as his heirs at law; and that by virtue of the laws in force at the time of the death of said Louis Cox, they, as the surviving wife and daughters of said decedent, are his sole heirs at law, and as such are entitled to the said allotment of land, and are the legal and equitable owners thereof and entitled to the immediate possession of the same. And said plaintiffs, after pleading certain other matters, immaterial here, prayed for appropriate judgment and relief. (Rec., pp. 15-17.) To this petition the said defendant, D. Campbell, on July 12, 1912, filed his answer in which he specifically denied every allegation in said petition, and further alleged that he duly purchased said land from R. D. Milton on February 9, 1911, and that said Milton duly purchased said land from George C. Crump on December 28, 1910, and that said George C. Crump duly purchased said allotment from Lucy Wildcat on August 2, 1907, all of which purchases were for valuable considerations

and without notice of any claims to said lands by said plaintiffs; that said Lucy Wildcat was an enrolled Seminole citizen, and a sister and only surviving relative of said Louis Cox, deceased; that said Louis Cox was an enrolled Seminole citizen, and died intestate on July 4, 1901, without having selected or received his allotment of lands in the Seminole Nation as his distributive share thereof, but that after his death, on June 28, 1902, the said allotment was made and set apart and allotment certificate issued therefor at the instance and request of said Lucy Wildcat as the sole heir of said Louis Cox, deceased, who was during her lifetime the sole legal and equitable owner of said allotment and had the legal right to sell and convey the same; that said Annie Wadsworth, Maggie Beamore and Nancy Alexander were all members and citizens of the Creek Tribe of Indians, and so appear on the approved Creek Rolls, and that their claims, if any, are inferior to said defendant's title to said land; and prayed that he be decreed the owner of said land and that title to the same be quieted in him. (Rec., pp. 18-19.) Thereatfer, on June 5, 1913, the cause was tried in said District Court upon the foregoing petition and answer and an agreed statement of facts entered into between the parties, in which it was stipulated and agreed, to-wit:

" *1st.* That the land in controversy was set apart by the Government of the United States as the distributive share of Louis Cox, who appears on the final rolls of the Seminole Tribe of Indians as a member of said tribe, opposite roll No. 1721.

" *2nd.* That the said Louis Cox died intestate on July 4th, 1901, and before selecting his allotment and before the said allotment, being the land above described, was set apart by the Government of the United States as his distributive share of the communal property of said Seminole Tribe of Indians.

" *3rd.* That at the time of his death he was lawfully married to one Annie Cox, now Annie Wadsworth, one of the plaintiffs herein, and as issue of said marriage he was survived by his two daughters, Maggie Cox, who is now Maggie Beamore, and Nancy Cox, who is now the plaintiff Nancy Alexander; that his said wife and two daughters, the plaintiffs herein, are members of the Creek Tribe of Indians and duly enrolled opposite Creek Indian Roll—Nos. 7555, 7556 and 7557, respectively; that no conveyance has ever been made by said plaintiffs to any one.

" *4th.* It is further stipulated that the only Seminole relative surviving Louis Cox was one Lucy Wildcat, whose name appears upon the approved Seminole Roll opposite Roll No. 400, and under whom the defendants claim title by virtue of divers conveyances.

" Together with a certified copy of Creek Census Card No. 2523, showing the enrollment

of all of the plaintiffs in this case, and Seminole Census Card No. 528, showing the enrollment of said Louis Cox, for the purpose of showing their age, which is as follows, to-wit:" (Rec., pp. 20-21.)

(See said census cards, pages 20-21 of record, the first of which is a photograph of the original, duly certified as a copy.)

And upon due consideration of the case upon the pleadings and said agreed statement of facts, said court rendered judgment for the defendant, D. Campbell—all other defendants having been eliminated by appropriate disclaimers—and dismissed plaintiffs' petition (Rec., pp. 19-22), to which judgment plaintiffs excepted and filed their motion for new trial (Rec., p. 22), which was overruled by said court and exceptions granted and time given to perfect an appeal therefrom to the Supreme Court of Oklahoma (Rec., pp. 22-23.)

And thereafter the said plaintiffs filed their petition in error and case-made in the Supreme Court of Oklahoma, where the same was cause No. 5667, *Annie Wadsworth, et al., plaintiffs in error,* v. *George C. Crump, et al., defendants in error;* and on the 20th day of September, 1915, the cause was therein submitted for decision on the record and briefs filed therein; and on October 19, 1915, the Supreme Court

of Oklahoma rendered its decision thereon affirming the judgment of the trial court (Rec., p. 23), holding in the syllabus of its opinion as follows:

> " Louis Cox, a Seminole citizen, died on July 4, 1901, before selecting his allotment. His surviving widow was a Creek, and she and their two children were duly enrolled as Creek citizens. *Held*, under the Act of Congress known as the Seminole Supplemental Treaty, passed and approved June 2, 1900, c. 610 (31 U. S. Stat. L. 250), the allotment in the Seminole Nation set apart by the Government as the distributive share of said Louis Cox did not descend to his said widow and children, for the reason that under the terms of the act above referred to his allotment could descend to his heirs only who were Seminole citizens." (See opinion, Rec., pp. 24-27.)

This opinion is reported in 154 Pac. 60. And thereafter, on November 16, 1915, the said Supreme Court granted to said plaintiffs in error leave to file petition for re-hearing out of time, and stayed mandate pending same (Rec., pp. 28-29), and on the 25th day of January, 1916, the court denied and overruled said petition for rehearing (Rec., p. 29), and mandate thereafter issued to the trial court. Thereafter, at the next term, March Term 1916, on the 21st day of March, without any notice whatever to the said D. Campbell, or his counsel, or an opportunity to him

to be heard, the said Supreme Court of Oklahoma granted leave to said plaintiffs in error to file a second petition for rehearing and recalled and stayed the said mandate theretofore issued to the trial court; resubmitted the cause for final decision and determination upon the record and briefs filed therein; reconsidered and reheard the cause; withdrew its said former opinion filed therein; reversed the cause and the judgment of the trial court and remanded it to the trial court with instructions to render judgment in favor of said plaintiffs in error, in accordance with its new opinion filed therein on that day. (Rec., p. 30.) All of which was done upon one and the same day (Rec., p. 30), and said second petition for rehearing for which leave was granted to file, and upon which said proceedings were had, was never filed in the office of the clerk of said Supreme Court in said cause, as shown by the record herein, and was never served on said defendant in error, D. Campbell, or his counsel, and which proceedings were not known to him or his counsel until about the 10th day of April, 1916, when they d i s c o v e r e d the same through a newspaper report and immediately filed a petition for rehearing therein. (Rec., pp. 37-39.) This second opinion is found in the record, pages 31-37, and is reported in 157 Pac. 713; the syllabus to which is as follows, to-wit:

" *1.* The purpose of preparing the rolls of Seminole citizens required by section 2 of the Seminole Agreement approved by Act of Congress of June 2, 1900, was to ascertain the number and identity of Seminoles entitled to share in the allotment of the tribal lands and monies and other property belonging to the Seminoles as a tribe.

" *2.* Section 2 of said agreement regulates the devolution of lands to which a duly enrolled Seminole citizen would have been entitled if living, where such citizen dies before receiving the same.

" *3.* In such case the property of the deceased goes to his heirs who are themselves Seminole citizens according to the laws of descent and distribution of the State of Arkansas, subject to the proviso contained in said section.

" *4.* The word 'citizen' as used in section 2 of said agreement is not limited to persons whose names are found on the roils prepared under section 1. Citizenship in the Seminole tribe did not necessarily extend to or invest in the citizen a personal or individual interest in the common or undivided property of the tribe, but might exist independent of any right to participate in the distribution of tribal property.

" *5.* C., a duly enrolled Seminole Indian, died July 4, 1901, before receiving his allotment, leaving him surviving a widow and two daughters who had been enrolled as Creeks. *Held,*

that the daughters were heirs of their deceased father under section 2 of the Seminole Agreement approved by Act of Congress June 2, 1900, and inherited the lands to which their father was entitled to the exclusion of more distant relations, though enrolled as Seminoles.

"6. The surviving widow of a duly enrolled Seminole citizen who died July 4, 1901, before receiving his allotment, is entitled to dower therein, where said lands are afterwards selected." (Rec., p. 31.)

Thereafter, on April 5, 1916, said defendant in error, D. Campbell, filed his petition for a rehearing in said cause, as hereinbefore mentioned (Rec. pp. 37-39), which was afterward, on May 31, 1916, overruled and denied by said Supreme Court of Oklahoma (Rec. p. 39), which is the highest court of law or equity of the State of Oklahoma in which a decision of said questions involved in this suit could be had; and this writ of error to the Supreme Court of the State of Oklahoma has been prosecuted to review its said judgment and decision, last above set forth, made and rendered on said second hearing in said cause; and the said decision and judgment denied to this plaintiff in error, D. Campbell, a right, title, privilege and immunity held by him under the Constitution and Statutes of the United States, and denied to him the right and title to said land, as afore

set forth, under said Seminole Supplemental Treaty, Act of Congress approved June 2, 1900, which was drawn in question in said cause and decision, and contrary to which the said Supreme Court decreed and awarded said land to the said defendants in error herein, Annie Wadsworth, Maggie Beamore and Nancy Alexander, as aforesaid.

SPECIFICATION OF ERRORS RELIED UPON.

First.

The said Supreme Court of the State of Oklahoma erred in holding and deciding that under the said Seminole Supplemental Agreement, 31 Stat. L. 250, the said land or allotment of Louis Cox, deceased, who was a Seminole citizen, descended to the said plaintiffs in error in this cause, Annie Wadsworth, Maggie Beamore and Nancy Alexander, who are each citizens of the Creek Nation and duly enrolled as such, for the reason that said Seminole Supplemental Agreement directs that said allotment shall descend to the heirs of said Louis Cox, deceased, who are Seminole citizens; and the said Lucy Wildcat was a Seminole citizen and the only surviving relative of said Louis Cox, deceased, who was a Seminole citizen, and was a sister of said Louis Cox.

Second.

The said Supreme Court of Oklahoma erred in holding and deciding that said allotment of land of said Louis Cox, deceased, did not descend to said Lucy Wildcat, who was the only surviving relative of said Louis Cox, deceased, who was a Seminole citizen, under said Seminole Supplemental Treaty, for

the reason that said treaty directs that said allotment should descend to the heirs of said Louis Cox, deceased, who are Seminole citizens.

Third.

The said Supreme Court of Oklahoma erred in holding and deciding that said land or allotment descended to said Maggie Beamore and Nancy Alexander, and in decreeing said land to them, for the same reasons set forth in the first and second assignments of error.

Fourth.

The said Supreme Court of the State of Oklahoma erred in holding and deciding that under said Seminole Supplemental Treaty, 31 Stat. L. 250, the said Annie Wadsworth, as the surviving wife of said Louis Cox, deceased, took a life estate or dower in the said allotment of said Louis Cox, because she was not a Seminole citizen, but was a Creek citizen, and because said allotment was not in existance at the time of the death of said Louis Cox, but was made after his death; and the said Louis Cox did not die seized or possessed of said allotment, and the said Annie Wadsworth, as the surviving wife of said Louis Cox, deceased, could have no inheritable interest or dower in said allotment.

Fifth.

The said Supreme Court of the State of Oklahoma erred in granting leave to said plaintiffs in error to file a second petition for rehearing—after the judgment of the trial court had been affirmed and mandate sent to the trial court—and in withdrawing its said former or first decision and in taking up and reconsidering said cause and rendering a new decision and judgment reversing the judgment of the trial court and awarding and directing judgment for said allotment to said plaintiffs in error, and recalling the mandate issued on its first decision and judgment affirming the judgment of the trial court; all of which was done on the same day and without any notice to said defendant in error, D. Campbell, or an opportunity to be heard, which deprived said D. Campbell of his said property and rights without due process of law, and the right to be heard, in violation of the rights guaranteed to him by the Constitution of the United States and the Fifth (Fourteenth intended) Amendment to the Constitution of the United States, as shown by the record in said cause; and in denying the petition for rehearing of said defendant in error, D. Campbell, filed herein.

ARGUMENT OF COUNSEL FOR PLAINTIFF IN ERROR.

For convenience and to avoid repetition we desire to present the above first, second and third assignments or specifications of error together, because they involve a discussion of the same facts, parts of the record and propositions of law. These three specifications of error present the main point in this case, to-wit:

Under the terms of section 2 of the Seminole Supplemental Agreement, Act of Congress approved June 2, 1900, the said allotment of Louis Cox, deceased, descended to and was inherited by Lucy Wildcat, because she was his only surviving relative who was a Seminole citizen; instead of descending to said Annie Wadsworth, Maggie Beamore and Nancy Alexander, the defendants in error herein, because they are each members and citizens of the Creek Tribe or Nation of Indians, and duly enrolled as such.

Upon the facts and the law applicable in this case we think there can be no escape from this conclusion. Louis Cox was a member of the Seminole Tribe of Indians, and was duly enrolled as such opposite No. 1721 of the approved rolls of Seminole

citizens, and died intestate on July 4, 1901, without having received or selected his allotment in the Seminole Nation as his distributive share of the lands held in common by the Seminole Tribe of Indians; and left surviving him his sister, Lucy Wildcat, who was his only surviving relative who was a member and citizen of the Seminole Nation or Tribe, and his wife and two daughters, Annie Wadsworth, Maggie Beamore and Nancy Alexander, the plaintiffs in error herein, *who are each members and citizens of the Creek Nation* or Tribe of Indians, and are duly enrolled as such; and after the death of said Louis Cox, on June 28, 1902, his said allotment in the Seminole Nation was made by the Government of the United States, and an allotment certificate was duly issued therefor. (Petition, Rec., pp. 14-17; Answer of D. Campbell, Rec., pp. 18-19; Agreed Statement of Facts, and exhibits, Rec., pp. 20-21.) The plaintiff in error, D. Campbell, by proper conveyances as hereinbefore mentioned acquired the title of Lucy Wildcat to said land (Rec., pp. 19 and 21), and stands in her position here. These are the facts agreed upon and admitted by the parties hereto, and upon which the cause was tried and the said decisions and judgments rendered in the courts below. The determining law of descent, governing the devolution of said property, in force at the time in question, is section 2 of the Seminole Supplemental Agreement, Act of

Congress approved June 2, 1900, 31 U. S. Stat. L. 250, which provides in part as follows:

> " If any member of the Seminole Tribe of Indians shall die after the thirty-first day of December, eighteen hundred and ninety-nine, the lands, money and other property to which he would be entitled if living, shall descend to his heirs who are Seminole citizens, according to the laws of descent and distribution of the State of Arkansas, and be allotted and distributed to them accordingly:"

The decision in this case narrowed to the determination of the meaning of the clause modifying the word "heirs," to-wit: "Who are Seminole citizens"; and the court by and through an extended, liberal and elastic construction, arrived at the conclusion that it meant "heirs," not "who are Seminole citizens," but who are *Creek citizens.* And held this, even to the exclusion of the "heirs who are Seminole citizens." (See opinion, Rec., pp. 31-37.) This was wrong and clearly erroneous, and was exactly the opposite of what Congress and the Seminole Tribe plainly and unmistakably *said and intended.*

The language of this act is transparent, unambiguous, explicit, plain and clear, and its meaning cannot well be mistaken. Where this is true courts will not indulge in construction, as there is no room or

necessity for construction, but they will enforce the statute according to its terms. *Thornley* v. *United States*, 113 U. S. 310, 28 L. ed. 999. In *Bate Refrigerating Co.* v. *Sulzberger*, 157 U. S. 1, 39 L. ed. 601, it was held that where the language of the act is explicit, the words used should not be departed from to give an effect to the law which may be supposed to have been designed by the legislature. In *Lake County* v. *Rollins*, 130 U. S. 662, 32 L. ed. 1060, it was held that where a law is expressed in plain and unambiguous terms, whether those terms are general or limited, the legislature should be intended to mean what it has plainly expressed. It was held in *Lewis* v. *United States*, 92 U. S. 618, 23 L. ed. 513, that where the language of a statute is transparent, and its meaning clear, there is no room for the office of construction; there should be no construction where there is nothing to construe. See also *Doggett* v. *Florida R. Co.*, 99 U. S. 72, 25 L. ed. 301; *United States* v. *Union P. R. Co.*, 91 U. S. 72, 23 L. ed. 224. The courts will not give construction to an Act of Congress when the words are unambiguous and the intent is plain, as there is no ground for judicial construction. *Dewey* v. *United States*, 178 U. S. 510, 44 L. ed. 1170; *United States* v. *Fisher*, 2 Cranch. 358, 2 L. ed. 304. In *Dewey* v. *United States, supra*, the court by Mr. Justice HARLAN, at page 521, says:

> " Our province is to declare what the law is, and not, under the guise of interpretation or under the influence of what may be surmised to be the policy of the government, so to depart from sound rules of construction as in effect to adjuge that to be the law which Congress has not enacted as such. Here the language used by Congress is unambiguous. It is so clear that the mind at once recognizes the intent of Congress. Interpreted according to the natural import of the words used, the statute involves no absurdity or contradiction, and there is consequently no room for construction. Our duty is to give effect to the will of Congress as thus plainly expressed."

And this is the universal rule announced by the highest courts of the states. In 36 Cyc 1106-2, it is stated:

> " The great fundamental rule in construing statutes is to ascertain and give effect to the intention of the legislature. This intention, however, must be the intention as expressed in the statute, and where the meaning of the language used is plain, it must be given effect by the courts, or they would be assuming legislative authority." (And decisions cited.)

Again, at page 1114-3, the rule is stated, that:

> " It is a very well settled rule that so long as the language used is unambiguous, a departure from its natural meaning is not justified, by any considerations of its consequences, or of public

policy; and it is the plain duty of the courts to give it force and effect."

In *Walker* v. *City of Spokane*, 62 Wash. 312, Ann. Cas. 1912 C, 994, the court says in the syllabus:

> " When the language of a statute is plain and free from uncertainty, there is no room for construction."

In *Smith* v. *Iron Mountain Tunnel Co.*, 46 Mont. 13, Ann. Cas. 1914 B, 551, the court says in the syllabus:

> " Where the language employed in a statute is plain and without ambiguity, it does not require judicial construction; in such a case courts must presume that the legislature intended what the words plainly say."

And in the opinion the court says, on page 19:

> " * * * * * * * *
>
> " 'When the language is plain, simple, direct, and without ambiguity, the act construes itself, and courts must presume the legislature intended what it plainly says. It is only in cases of ambiguous, doubtful and uncertain enactments that the rules and principles of interpretation can be brought into requisition. It is not allowable to interpret what has no need of interpretation'."

In *United States* v. *Colorado & Northwestern Railroad Co.*, 157 Fed. Rep. 321, 13 A. & E. Ann. Cas. 893, the court states the rule in the syllabus as follows:

> " Construction and interpretation have no function where the terms of the statute are plain and certain. In such a case Congress must be presumed to mean what it has plainly expressed."

But, as held by the authorities, the intention of the legislature, where intention is to be ascertained, must be derived from the words or language used. It was held by the court in *Gardner* v. *Collins*, 2 Pet. 58, 7 L. ed. 347, that the spirit of the act must be extracted from the words of the act, and not from conjecture *aliunde*. In *United States* v. *Goldenberg*, 168 U. S. 95, 42 L. ed. 394, it was held that the general rule of statutory construction is that the intent of the lawmaker is to be found in the language that he has used; and that language is always controlling unless there are cogent reasons for believing that the language does not fully and accurately disclose the intent. In the case of *The Paulina* v. *United States*, 7 Cranch. 52, 3 L. ed. 266, it was held that legislative intent determining statutory construction is to be searched for in the words which the legislature has employed, and there is no ground for construc-

tion where apt language is found. In *Ex parte Goodrich*, 160 Cal. 410, Ann. Cas. 1913 A, 56, the court held, in the syllabus:

> " There can be no intent in a statute not expressed in its words, and there can be no intent on the part of the framers of the statute which does not find expression in its words."

In *Tremblay* v. *Murphy*, 111 Me. 38, Ann. Cas. 1915 B, 1074, the court states the rule in the syllabus, as follows:

> " In construing a statute the intention of the legislature must govern, and the language of the statute itself is the vehicle best calculated to express that intention, and such intention cannot be ascertained by adding to or detracting from the meaning conveyed by the plain language used."

In *Mellen Lumber Company* v. *Industrial Commission et al.*, 154 Wis. 114, Ann. Cas. 1915 B, 997, at page 120 the court says:

> " The law as it reads has the merit of being explicit as to the amount of compensation which the employee shall receive, although it bears rather heavily on the employer in a case like the one under consideration. Where the language used in a statute is plain, the court cannot read words into it that are not found therein either

expressly or by fair implication, even to save its constitutionality, because this would be legislation and not construction."

Nor may courts look to the consequences or what might be considered the injustice of the act if followed, in their interpretation of the act. That is the function of the legislature. In *Mellen Lumber Co. v. Industrial Commission et al., supra*, at page 118, *et seq.*, the court says:

> " It is its function to amend the act where amendment is found necessary. The fact that injustice may result in the instant case is nothing that concerns the courts unless some constitutional right of the appellant is being invaded. The plain and obvious meaning of the language used in a statute is generally the safest guide to follow in construing it. Seeking hidden meanings at variance with the language used is a perilous undertaking which is quite as apt to lead to an amendment of the law by judicial construction as it is to arrive at the actual thought in the legislative mind. Where a statute plainly says, as this one does, that the loss in case of partial disability shall consist of such percentage of the weekly earnings of the employee as shall fairly represent the proportionate extent of the impairment of his earning capacity *in the employment in which he was working at the time of the accident*, we fail to see how the court would be justified in adding thereto the following limitation: 'Less such sums as the employee might be able

to earn in some other calling.' This in effect is what the court would have to do if it adopted the construction for which the appellant contends. There is nothing doubtful, obscure, or ambiguous about the language used. It is argued that a literal interpretation of the statute should not be followed where such interpretation would lead to an absurd consequence. The statute in question may be inequitable, but this does not make it absurd. It was one time urged that courts might mitigate the rigors of harsh statutes by adopting a rule of equitable construction by which exceptions might be read into such statutes. It never obtained in this state, nor to any considerable extent in this country. It was disposed of by Chief Justice Dixon in *Encking* v. *Simmons*, 28 Wis. 272, 276, in the following language:

> " 'The proposition, however it may once have been held or considered, that the courts, upon what is termed an equitable construction or otherwise, may, against the plain language of a statute and in opposition to the intent clearly expressed by the words, mitigate the "violence of the letter" by introducing exceptions where the statute itself contains none, so as to relieve in case of hardship or particular inconvenience, has been too long and too frequently rejected to be now the subject of serious argument or doubt. Such doctrine, if it ever existed, was long since exploded, and the rule now universally recognized and acted upon is, that whatever else may be done with

> the words of a statute, they may never, in the language of Lord BACON, "be taken to a repugnant intent".' "

Compare the clause construed by the court in the case above with the clause in the case at bar. In that case the court says: "There is nothing doubtful, obscure or ambiguous about the language used." The language sought to be construed in the case at bar, to-wit: "Seminole citizens," is manifestly less "doubtful, obscure or ambignous." If the language of the statute in that case was "plain," as the court held, then the language of the act in the case at bar is plainer and clearer. No injustice will occur to any person by following the interpretation we are insisting on by adopting the plain language of the statute. *Ita lex scripta est.*

We trust the court will grant its indulgence in our extensive quotation and citation of authorities on these rules of statutory construction, for we do so because we are convinced that the court below committed its grievous error in this case by its failure to observe these wholesome and well established rules. It is evident upon the face of its decision that the court not only failed to observe these rules, but that it refused to do so and held to the direct opposite of such rules when it declared, that: "it would require the most powerful and impelling reasons for

us to hold" (Rec., p. 34) to the construction we are contending for, to-wit: that the words "Seminole citizens" mean just what it says, and does not mean *Creek citizens;* that the defendants in error are excluded because they are *members* and citizens of the Creek Nation. For, it is expressly stipulated and agreed by the defendants in error herein that they each "*are members of the Creek Tribe of Indians*" (Rec., p. 20; Agreed Statement of Facts, Par. 3), and this fact is so incompatible and inconsistent with Seminole citizenship that the defendants in error could not under any conceivable construction be Seminole citizens and entitled to this property. They stipulate and agree that they are not what the court held they were. The court was powerless to change this *fact* to the contrary. Dual membership or citizenship in the Seminole and Creek tribes is inconceivable and could not exist, as we shall hereafter show, and yet this is the result of the court's holding. They solemnly *agree* of record that they are *members of the Creek Tribe* and the court says they are Seminole citizens. They agree that they are the opposite of "Seminole citizens," that they are not "Seminole citizens," but that they are *Creek citizens.* This is the *established fact,* upon which they submit their case, and there is no necessity for construction to ascertain it. It comes to the court already ascer-

tained. The defendants in error stipulate and agree that they are not what the treaty says they shall be in order that they might inherit. While it is at the same time admitted that said Lucy Wildcat is a sister of said Louis Cox, and his only surviving relative who is a Seminole citizen. (Rec., pp. 19-21.) Nothing more is required. The facts are brought to the court showing who of these parties are "Seminole citizens"; and the law says the property shall be allotted to those who are such "Seminole citizens." Nothing is left to construction. But if there is any room for construction, let us examine the legislation on the subject and ascertain the meaning of the word "citizen," as used in this treaty.

Regardless of the fact that the defendants in error are members and citizens of the Creek tribe, the court below, referring to section 1, of the Seminole Supplemental Agreement, Act of Congress approved June 2, 1900, says (opinion, Rec., p. 33):

> " By this provision it was the duty of the Commission to enroll plaintiffs, Maggie Beamore and Nancy Alexander, as it is admitted that they are the children of Louis Cox, and were born prior to the 31st day of December, 1899, and had they been placed upon said roll, would have been entitled to an allotment of tribal lands and a distributive share of other tribal property."

In this the court was plainly in error. It entertained the idea that said children of Louis Cox, though Creek citizens, ought to receive this allotment, and it, therefore, p r o c e e d e d to, in effect, amend the r o l l s which was the jurisdiction and province of said Commission only. Its difficulty was that it failed to look b e y o n d the provisions of this section to the prior legislation to which the section expressly refers. The Act of Congress of June 10, 1896, 29 Stat. L. 339, directed the Dawes Commission to proceed at once to hear and determine the applications of all persons for citizenship in any of the Five Civilized Tribes, and in doing so to give full force to the rolls, usages and customs of said tribes; and it was given plenary power to administer oaths, issue process and obtain all evidence in whatsoever form to determine such rights of citizenship, and the rolls so prepared by them were declared to be the true and correct rolls of persons entitled to the rights of citizenship in said tribes. And the act confirmed the rolls of citizenship of the s e v e r a l tribes then existing. By the Act of Congress of June 28, 1898, 30 Stat. L. 495, known as the Curtis Act, full jurisdiction was conferred upon the Dawes Commission to ascertain the citizenship of all members of the respective Five Civilized Tribes and it was directed to make a correct roll of such citizens. Paragraph 3, of section 21 thereof, provides:

> " Said Commission is authorized and directed to make correct rolls of the citizens by blood of all the other tribes, eliminating from the tribal rolls such names as may have been placed there by fraud or without authority of law, enrolling such only as may have lawful right thereto, and their descendants born since such rolls were made * * * ."

And paragraph 8 of the same section provides:

> " The several tribes may, by agreement, determine the right of persons who for any reason may claim citizenship in two or more tribes, and to allotment of lands and distribution of moneys belonging to each tribe; but if no such agreement be made, then such claimant shall be entitled to such rights in one tribe only, and may elect in which tribe he will take such rights; but if he fail or refuse to make such selection in due time, he shall be enrolled in the tribe with whom he has resided, and there be given such allotment and distributions, and not elsewhere.
>
> " No person shall be enrolled who has not heretofore removed to and in good faith settled in the nation in which he claims citizenship:***"

The act also authorized said Commission to take a census of each of said tribes, "or to adopt any other means by them deemed necessary to enable them to make such rolls." Next to the last paragraph of said section 21 then provides:

> " *The rolls so made,* when approved by the Secretary of the Interior, *shall be final, and the persons whose names are found thereon,* with their descendants thereafter born to them, with such persons as may intermarry according to tribal laws, *shall alone constitute the several tribes which they represent.*" (Italics ours.)

Section 1 of the Act of Congress approved June 2, 1900, 31 Stat. L. 250, known as the Seminole Supplemental Agreement, provides:

> " *First.* That the Commission to the Five Civilized Tribes, in making the rolls of Seminole citizens, *pursuant to the Act of Congress approved June twenty-eight, eighteen hundred and ninety-eight,* shall place on said rolls the names of all children born to the Seminole citizens up to and including the thirty-first day of December, eighteen hundred and ninety-nine, and the names of all Seminole citizens then living; and the rolls so made, when approved by the Secretary of the Interior, *as provided by said Act of Congress,* shall constitute *the final rolls of Seminole citizens,* upon which the allotment of lands and distribution of money and other property belonging to the Seminole Indians shall be made and to no other persons."

Section 28, of the Creek Agreement of March 1, 1901, is similar. It provides that all Creek citizens living on April 1, 1899, and entitled to enrollment

under the provisions of the Curtis Act, *supra,* shall be placed upon the rolls by the Commission, and the rolls so made, when approved by the Secretary of the Interior shall be the final rolls of Creek citizens, upon which all distributions shall be made, and to no other persons.

Under the provisions of the above legislation it was not the duty of the said Commission to enroll said Maggie Beamore and Nancy Alexander as Seminole citizens, but it was directed to enroll them as Creek citizens which it properly did. As shown by Creek Census Card No. 2523 (Rec., pp. 20-21), their residence was at Coweta, in the Creek Nation; they were enrolled in 1890 on the tribal roll of Tuskegee Town of the Creek tribe; their mother was a full-blood Creek and resided with them in the Creek Nation. The positive custom of the Seminole and Creek tribes, well known to all who have given this subject any study, was that the tribal membership of the mother determined the tribal membership of the children; or, in other words the children, without exception, took the t r i b a l membership of their mother. If a Seminole woman married a Creek man the children of the marriage became, *ipso facto,* members or citizens of the Seminole Tribe. If a Creek woman married a Seminole man, likewise the childen of the marriage became members or citizens of

the Creek tribe. This custom was as invariable and fixed as though it was prescribed by a written statute. The evident and ample reasons for this custom is needless to explain here. This established custom the Dawes Commission was commanded to give full force to, by the Act of June 10, 1896, *supra;* and they did so. The approved Seminole and Creek rolls are a monument of evidence of this fact, that the Commission adopted and scrupulously enforced this custom of which the facts in this case constitute but a striking example. The mother, Annie, was a citizen of the Creek tribe, and pursuant to this custom, the children, Maggie and Nancy, became citizens of the Creek tribe and were duly enrolled as such by the Commission, which was approved by the Secretary of the Interior; while their father, Louis Cox, was a Seminole citizen. (Census cards, Rec., pp. 20-21.) These children's enrollment in 1890 on the Tuskegee Town tribal roll was confirmed by the Act of Congress of June 10, 1896, *supra;* and it is well known that the Commission took these former tribal rolls which had been confirmed or approved and adopted them in making the final rolls provided for in the above acts and agreements, which the law authorized and directed it to do. This custom has been recognized by the courts. In *Lamb* v. *Baker,* 27 Okla. 739, at page 743, the court says: "And they, following the citizenship of their mother, were enrolled as

members of the Seminole tribe." And in *Hughes Land Co.* v. *Bailey*, 30 Okla. 194, at page 196, it is said: " * * * by virtue of the citizenship of their mother, they were enrolled as citizens of the Seminole Nation." Under these facts the law fixed the status of these children as Creek citizens, and not members or citizens of the Seminole tribe. The Seminole Agreement, *supra*, recognized not only the above custom, but it recognized and expressly referred to this previous legislation and made it a part thereof. Nowhere does it intimate that the rolls previously authorized, made and confirmed should be ignored, destroyed or obliterated, and a new roll and census made and all this previous legislation repealed, or said children taken off of the Creek roll and placed on the Seminole roll. All statutes relating to the same subject matter are considered and construed together. *United States* v. *Babbit*, 1 Black. 55, 17 L. ed. 94; *United States* v. *Henderson*, 11 Wall. 652, 20 L. ed. 235; *United States* v. *Freeman*, 3 How. 556, 11 L. ed. 724; *Viterbo* v. *Friedlander*, 120 U. S. 707; *United States* v. *Farden*, 99 U. S. 10. We think it is clear that the Commission performed its duty correctly and as directed by law. The holding of the court below, that it was the duty of the Commission to enroll said defendants in error, would lead to an absurdity; for, as the court held, had the Commission done so, they would have been entitled to an

allotment of Seminole lands; and, being enrolled members of the Creek tribe also, would have been entitled to an allotment in the Creek Nation, thus receiving a double distribution, contrary to all said legislation. A construction of a statute producing absurdities, or consequences in direct violation of its provisions, is always to be avoided. *Huidekoper* v. *Douglas*, 3 Cranch. 1, 2 L. ed. 347. It is equally clear that there is nothing mysterious about the meaning of the word "citizen." It means a member or unit of the tribe, in the same sense that Congress used the word or term in the previous legislation, which doubtless it had in mind and before it when adopting the agreement, *supra*. The same is true with the Commission. It administered the previous law; gave full force to the tribal rolls and customs, as commanded, and drafted and negotiated said agreement with the Seminole tribe. It used the term in the same sense, for they well knew its former meaning. Where the same words or terms are used in two acts of Congress which are *in pari materia*, and a certain meaning is given the same in the first act, the word or term should receive the same interpretaion in the latter act. *Reiche* v. *Smythe*, 13 Wall. 162, 20 L. ed. 566. But it seems that both the Original Creek Treaty, approved March 1, 1901, 31 Stat. L. 861, and the Supplemental Creek Treaty, Act of Congress approved June 30, 1902, 32 Stat. L. 500, settle and fully define

the word "citizen," as far as the defendants in error are concerned. In section 1, of each of these acts it is provided, that "The word 'citizen' or 'citizens' shall be deemed to refer to a member *or members of the Muskogee Tribe or Nation of Indians.*" (Italics ours.) This legislative definition of the word is conclusive, and, by itself fixes the status of the defendants in error as not "Seminole citizens," by process of exclusion. It seems to us equally conclusive that *the word "citizen," as used in the Seminole agreement, supra, "shall be deemed to refer to" members of the Seminole Tribe or Nation of Indians.* The same Dawes Commission negotiated said treaties with both of these tribes; in fact, it negotiated and largely drafted all the agreements with all of the Five Civilized Tribes; and this constitutes the most powerful and impelling reason why this word was intended in the same sense in the Seminole Nation as in the Creek or other nations, to-wit: that "Seminole citizens" was intended likewise to mean members of the Seminole Tribe or Nation of Indians.

All that we have said is also true as to the meaning of the term "Seminole citizens" as used in sections 1 and 2 of said Seminole Agreement, respectively; that the term as used in the first section was used in the same sense and was intended to mean the same in the second section. The court below sought

to draw a distinction between the meaning of this term in the first section and its meaning in the second section of the agreement. It argued that the term as used in the first section, to-wit: "and the rolls so made, when approved by the Secretary of the Interior, as provided by said Act of Congress, shall constitute the final rolls of Seminole citizens, upon which allotment of lands and distribution of money and other property belonging to the Seminole Indians shall be made, and to no other persons," was intended only "to determine the number of individual Indians entitled to share in the distribution of such tribal property, so that a basis could be found upon which to make such distribution"; but held, in effect, that this same term as used in section 2, to-wit: "heirs who are Seminole citizens," meant something different, that *it simply meant heirs.* (Rec., pp. 32-34.) This would be certainly at variance with well established rules of construction. Where the same word or phrase is used in different parts of a statute, it will be presumed to be used in the same sense throughout. *Pitte* v. *Shipley,* 46 Cal. 154; *People* v. *Behan,* 7 Abb. Pr. (N. Y.) 82; *Spencer* v. *Metropolitan Bd. of Works,* 22 Ch. D. 142. And where the meaning of the word or phrase in one instance is clear, it will be given the same meaning elsewhere in the statute. *Gunning* v. *People,* 86 Ill. App. 174; *James* v. *Dubois,* 16 N. J. L. 285; *Rhodes* v. *Weldy,*

46 Ohio St. 234; *Raymond* v. *Cleveland*, 42 Ohio St. 522; *Postal Tel. Cable Co.* v. *Farmville etc. R. Co.*, 96 Va. 661. Further, this agreement is an amending statute of the previous legislation to which it refers; and an amending statute is regarded as a part of the original statute in this connection. *Browne* v. *Turner*, 174 Mass. 150.

All of the foregoing facts were before the Commission as evidence upon which to base its judgment in fixing the citizenship of the defendants in error and enrolling them in the tribe to which they belonged, as directed by law. These defendants in error then made application to the Commission for enrollment as citizens of the Creek tribe on May 18, 1901, and citizenship certificates, as such citizens, duly issued to them in July, 1901, and their enrollment as Creek citizens was approved by the Secretary of the Interior, March 28, 1902 (Rec., pp. 20-21); and we have a right to assume that they each received their own allotments and distribution of property in the Creek Nation, as such citizens, because the law directed that they should. This represents the adjudication of the special tribunal empowered by Congress to hear and determine this particular question, the citizenship of the defendants in error, and that adjudication is *quasi*-judicial and is impervious to collateral attack, and settles for all purposes in this

case the fact that the defendants in error are Creek citizens and not "Seminole citizens." *United States* v. *Wildcat et al.*, U. S. Adv. Ops. 1916, page 561. This decision of the United States Supreme Court, handed down May 21, 1917, is decisive of the question here. In paragraph 1 of the syllabus it is stated:

> " The question of fact whether a Creek Indian was living on April 1, 1899, the decision of which was committed to the Dawes Commission by the Curtis Act of June 28, 1898, (30 Stat. at L. 495, chap. 517), and the Creek Agreement of March 1, 1901 (31 Stat. at L. 861, chap. 676), No. 28, authorizing such Commission to make investigation and determine the names of those entitled to be on the rolls of citizenship and to participate in the division of the tribal lands, cannot be retried in the courts, when not impeached for fraud or mistake, where the decision of the Commission to place the name of such Indian on the roll of Creek citizens by blood has been followed by the action of the Interior Department, confirming the allotment, and ordering the patent conveying the lands, which were in fact issued."

At page 564, in speaking of the legislation which we have above discussed, the court, by Mr. Justice DAY, says:

> " There was thus constituted a *quasi*-judicial tribunal whose judgments within the limits of its jurisdiction were only subject to attack for

fraud or such misake of law or fact as would justify the holding that its judgments were voidable. Congress, by this legislation, evidenced an intention to put an end to controversy by providing a tribunal before which those interested could be heard and the rolls authoritatively made up of those who were entitled to participate in the partition of the tribal lands. It was to the interest of all concerned that the beneficiaries of this division should be ascertained. To this end the Commission was established and endowed with authority to hear and determine the matter.

" A correct conclusion was not necessary to the finality and binding character of its decisions. It may be that the Commission, in acting upon the many cases before it, made mistakes which are now impossible of correction. This might easily be so, for the Commission passed upon the rights of thousands claiming membership in the tribe and ascertained the rights of others who did not appear before it, upon the merits of whose standing the Commission had to pass with the best information which it could obtain.

" When the Commission proceeded in good faith to determine the matter and to act upon information before it, not arbitrarily, but according to its best judgment, we think it was the intention of the act that the matter, upon the approval of the Secretary, should be finally concluded and the rights of the parties forever settled, subject to such attacks as could be suc-

cessfully made upon judgments of this character for fraud or mistake."

And further, at page 565:

> " For this purpose it determined to divide the lands among those living on April 1, 1899, and constituted a tribunal to investigate the question of membership and consequent right to share in the division. We think the decision of such tribunal, when not impeached for fraud or mistake, *conclusive of the question of membership in the tribe*, when followed, as was the case here, by the action of the Interior Department confirming the allotment and ordering the patents conveying the land, which were in fact issued. If decisions of this character may be subject to annulment in the manner in which the government seeks to attack and set aside this one, many titles supposed to be secure would be devested many years after patents issued, upon showing that the decision was a mistaken one. The rule is that such decisions are presumably based upon proper showing, and that they must stand until overcome by full and convincing proof sufficient, within the recognized principles of equity jurisdiction in cases of this character, to invalidate them. * * * " (Italics ours.)

In the case at bar, the decision of the Commission—after due investigation, and application for membership in the Creek tribe made by the defendants in error—that defendants in error were members

or citizens of the Creek tribe, was followed by the action of the Interior Department confirming and approving their enrollment as Creek citizens, and this decision is, therefore, "conclusive of the question of membership in the tribe"; and it never has been questioned *by the defendants in error* to this day. Being, by their own solemn admission and by decision of said Commission, members or citizens of the Creek tribe, defendants in error are citizens of a tribe other than the Seminole, and therefore not Seminole citizens, and did not inherit this property under section 2 of said Agreement. They could not be citizens of both tribes.

This conclusion was the intention of the Government and the Seminole tribe. It was intended that Seminole lands should go to Seminoles, and Creek lands to Creeks. By article 3 of the Treaty of August 7, 1856, 11 Stat. L. 699, the United States solemnly guaranteed to the Seminoles the lands ceded to them. By article 14 of the Treaty of 1832, with the Creeks, 7 Stat. L. 366, the United States likewise guaranteed to the Creeks their lands west of the Mississippi. By article 13 of the treaty of United States with the Creek tribe, proclaimed August 28, 1856, it was provided that the people of each the Creek and Seminole tribes should have safe conduct and free passage through the lands of the other, and that

members of each should have the right to settle within the country of the other, and thereupon, be entitled to all the rights, privileges and immunities of members thereof, "*except that no member of either tribe shall be entitled to participate in any funds belonging to the other tribe.*" (Italics ours.) Consistent with this policy, it appears from the Compiled Laws of the Creek Nation of 1880, that it was enacted as a part of the laws of the Creek Nation that:

> " All non-citizens not previously adopted and being married to citizens of the nation, or having children entitled to citizenship, shall have a right to live in this nation and enjoy all the privileges enjoyed by other citizens, *except participation in the annuities and in the final participation in the lands.*" (Italics ours.)
>
> See *Armstrong* v. *Wood,* 195 Fed., at page 140.

By section 28 of the Original Creek Treaty of March 1, 1901, *supra,* the laws of the Creek Nation relative to descent and distribution, were adopted in the Creek Nation, and the above provision became operative as a part thereof. This law remained in force in the Creek Nation until the adoption of the Creek Supplemental Treaty, *supra,* in July, 1902. Recognizing and fully cognizant that it had long been the established policy of the Creek Nation, as well as their own, that all non-citizens should be ex-

cluded from participation in the annuities and in the final participation in the lands of their tribe, the Seminole tribe entered into the Seminole Supplemental Agreement, ratified by Act of Congress, approved June 2, 1900, by section 2 of which they provided:

> " *Second.* If any member of the Seminole Tribe of Indians shall die after the thirty-first day of December, eighteen hundred and ninety-nine, the lands, money, and other property to which he would be entitled if living, shall descend to his heirs who are Seminole citizens, according to the laws of descent and distribution of the State of Arkansas, and be allotted and distributed to them accordingly; *Provided,* That in all cases where said property would descend to the parents under said laws the same shall first go to the mother instead of the father, and then to the brothers and sisters, and their heirs, instead of the father."

This is the culmination of the guarantee of the Government in 1856 to the Seminoles, and of the consistent policy of the Seminoles maintained since that time. It evidences a pronounced intention on the part of the tribe, as well as the Government, that the property of the Seminole tribe should go to its members, in conformity with their previous consistent purpose; and in order to carry it out they evolved the simple and logical plan, found in the two brief

sections of this Supplemental Seminole Agreement, by which all the living members of the tribe were enrolled and then the tribal property was divided among its members as enrolled, and if any member died after said roll was made his share was to go to and be allotted and distributed to his heirs "*who are Seminole citizens.*" Thus, by the plain, simple and unmistakable language of this clause was the long cherished and often announced policy of the tribe and the Government finally and completely carried out, and the tribal property distributed among the members of the tribe. We doubt if ever a purpose was as consistently announced and as plainly and unmistakably expressed in any legislation, especially covering a like period. This is the only logical conclusion to this subject, and from it none of the dire incidents or consequences that seemed to grapple the mind of the court below can follow. From mature study, and an extensive period of practice in the country of these people, we are convinced that the correct and logical intepretation of said section 2 of the Seminole Supplemental Agreement, *supra,* is as follows:

THE SPECIFIC PURPOSE AND INTENTION WAS TO LIMIT THE RIGHT TO INHERIT SUCH PROPERTY TO SEMINOLE CITIZENS, ONLY, SUCH AS WOULD HAVE BEEN EN-

TITLED TO ENROLLMENT *AS SEMINOLES* HAD THEY BEEN LIVING ON "THE THIRTY-FIRST DAY OF DECEMBER, EIGHTEEN HUNDRED AND NINETY-NINE," AND TO EXCLUDE ALL OTHERS. IT WAS NOT THE PURPOSE TO LIMIT THE RIGHT OF DESCENT TO *ENROLLED* CITIZENS. CHILDREN OF SUCH DECEDENT, IF SEMINOLES, SUCH AS WOULD HAVE BEEN ENTITLED TO ENROLLMENT AS SEMINOLES, UNDER THE PROVISIONS OF THE PREVIOUS LEGISLATION AND SAID AGREEMENT, HAD THEY BEEN LIVING DECEMBER 31, 1899, WOULD INHERIT, ALTHOUGH NOT ENROLLED; BUT NO ONE WHO COULD NOT HAVE BEEN SO ENROLLED COULD INHERIT, AND CERTAINLY NOT IF ENROLLED AS A MEMBER OF ANOTHER TRIBE.

This was the contemporaneous construction of said act by its authors and the Interior Department. Hon. A. S. McKennon, who was a member of said Dawes Commission at the time of the enrollment and the making of the treaties with said tribes, *supra,* and who drafted said Seminole Supplemental Agreement, and signed it as one of the Commission, was afterwards attorney for the Seminoles, under the Department of the Interior, and while such attorney, on De-

cember 3, 1902, wrote a letter to a member of the Seminole tribe construing said agreement; which letter is as follows:

"Archibald S. McKennon. John W. Willmott.

" *Law Office of*

" McKennon & Willmott.

" Wewoka, Ind. Ter., Dec. 3rd, 1902.

"Mrs. Ellen Fish,

" Wewoka, I. T.

"Dear Madam:

" In answer to your inquiry as to the allotment of your brother, Willie Lena: Under the Seminole Agreement, Willie had no power to dispose of his allotment by will to any one not a Seminole, but it would go upon his death, to his nearest relatives who are Seminole citizens. If his children are Creeks, they would not get his land, but you, as his sister, and his brothers, would be entitled to it.

" Respectfully,

" (Signed) A. S. McKennon,

" Attorney for the Seminoles."

According to our information, a duplicate of this letter is in the files of the Department of Interior, and the original of the same, of which the above is a true copy, is in the files of Hon. Lafayette Walker, United States Probate Attorney, at Holdenville, Ok-

lahoma, who is now attorney for the Seminoles, under commission from the Secretary of the Interior.

The contemporaneous construction of a statute by those charged with its execution is entitled to great respect, and ought not to be overruled without cogent reasons.

—*United States* v. *Moore*, 95 U. S. 760;
United States v. *Johnston*, 124 U. S. 226;
Pennoyer v. *McConnaughy*, 140 U. S. 1.

We desire to submit another letter from Mr. McKennon to Mr. Walker as such United States Probate Attorney, which is now a part of the records of the latter's office; and, although it may not come as strictly within the rule of departmental construction as the above letter, it is submitted for whatever consideration this court may give to it. The letter is as follows:

" McKennon & McKennon
" *Attorneys at Law*
" McAlester, Oklahoma,
"Hon. Lafayette Walker, April 26, 1915.
" United States Probate Attorney,
" Holdenville, Oklahoma.
"Dear Sir:
" I am just in receipt of your letter April 22, 1915, requesting that I, in a letter to you, express

the intention of the Commission to the Five Civilized Tribes, and the Seminole Commissioners, in framing the Second Paragraph of the Seminole Agreemnt of October 7, 1899, *viz.:*

> " '*Second.* If any member of the Seminole Tribe of Indians shall die after the thirty-first day of December, eighteen hundred and ninety-nine, the lands, money and other property to which he would be entitled if living, shall descend to his heirs who are Seminole citizens, according to the laws of descent and distribution of the State of Arkansas, and be allotted and distributed to them accordingly; *Provided,* that in all cases where such property would descend to the parents under said laws, the same shall first go to the mother instead of the father, and then to the brothers and sisters, and their heirs, instead of the father.'

" I, as a member of said Commission, in person and alone, negotiated that agreement with Hon. John F. Brown, Commissioner on behalf of the Seminoles, and I remember, distinctly, that Governor Brown insisted that members of the Seminole Tribe of Indians, alone, inherit Seminole lands, excluding all who were not members of the tribe, from such inheritance, which was agreed upon, and I drafted the second paragraph above quoted with a view to that end, and, upon reading it at this time, I cannot understand how it could be otherwise construed.

" Very truly yours,

" (Signed) A. S. McKennon."

Captain McKennon, as he is known to us, is an able and distinguished lawyer, and a gentleman of lofty character. He has had extensive experience in the affairs of the Five Civilized Tribes, having served upon the Dawes Commission, and afterwards as attorney for the Seminoles, and since has been practicing his profession in the territory of said tribes. No inducement could cause him to give anything other than a true construction of said treaty, as intended. His constructions above are consistent, although given years apart, and they accord with the conclusion we have reached above as the correct construction of said agreement. He drafted said agreement, and we believe his construction is entitled to great weight. It harmonizes with all the previous legislation, and the plain language used in the agreement.

The policy of the Creek tribe was the same. Like the Seminoles, they manifested a long and consistent desire to have their tribal property always go to their own members. After their original treaty, *supra,* putting in force the laws of descent and distribution of the Creek Nation, the Supplemental Creek Agreement was negotiated, and ratified June 30, 1902, 32 Stat. L. 500, by section 6 of which it was provided:

" The provisions of the Act of Congress ap-

> proved March 1, 1901 (31 Stat. L. 861), in so far as they provide for descent and distribution according to the laws of the Creek Nation, are hereby repealed and the descent and distribution of land and money provided for by said act shall be in accordance with chapter 49 of Mansfield's Digest of the Statutes of Arkansas now in force in Indian Territory: *Provided*, That only citizens of the Creek Nation, male and female, and their Creek descendants shall inherit lands of the Creek Nation: *And provided further*, That if there be no person of Creek citizenship to take the descent and distribution of said estate, then the inheritance shall go to non-citizen heirs in the order named in said chapter 49."

All that we have said on construction and concerning the legislation previously enacted is equally applicable here. Consistent with their long announced purpose, as shown by said earlier treaties and the laws of the Creek Nation, to have the members of the tribe alone participate in the tribal property, the Creeks now come to the division of their tribal lands among their members. And, like the Seminoles, they devise a simple way to do so; they make a roll of all their members to whom the division is to be made, and if any member dies his share, under said section 6, was to go to his heirs "only" who are "citizens of the Creek Nation," "and their *Creek* descendants" (italics ours), and only in case there was no heir "of Creek citizenship to take the descent and distribution

of said estate" was the same to "go to non-citizen heirs." Thus the tribal property was always distributed to members of the tribe, as long as there were heirs who were members of the tribe to take. This is what was clearly intended, and what they did. The word "citizen," by Sec. 1 of the agreement, is defined to mean a member of the Creek tribe. Likewise, the term "Creek descendants" means members of the Creek tribe, or such persons who, had they been living April 1, 1899, would have been entitled to enrollment as citizens, under the tribal customs and law at that time, for such persons would always be "Creeks" and members or citizens of the tribe. It was the intent and purpose to limit such descent to such heirs who were members or citizens of the tribe, if such there were. The word "Creek" in the second proviso is used to modify the word "descendants," and evidently was advisedly used to convey this very meaning, for otherwise it would be wholly superfluous and meaningless; and the use of the word "descendants" alone would in every conceivable instance convey the intention plainly and unmistakably, if it was intended not to exclude non-members of the tribe. This contention and view is sustained by the Circuit Court of the Eastern District of Oklahoma, in *Armstrong* v. *Wood*, 195 Fed. 137, decided September 25, 1911, wherein the court speaking of this legislation, at page 140 says:

" But, as appears from the Compiled Laws of the Creek Nation 1880, it was a provision of the Creek laws that:

> " 'All non-citizens not previously adopted and being married to citizens of the nation, or having children entitled to citizenship, shall have a right to live in this nation and enjoy all the privileges enjoyed by other citizens, except participation in the annuities and in the final participation in the lands.'

" It is evident that, even when this act was passed, the people of the nation anticipated the breaking up of tribal relations and division of the land in severalty among the members, and announced the policy that non-citizens should not participate therein. But this policy of non-participation by non-citizens might have been thwarted but for this proviso in section 6. The living allottees were, of course, confined to enrolled members of the tribe, but where one so enrolled and entitled to allotment had died before allotment to provide that his share in the lands of the nation should descend and be allotted to his heirs according to the laws of Arkansas might in many instances, but for the proviso, have resulted in non-citizens of the Nation participating in the final division of the tribal lands. By substituting the Arkansas law for the Creek law, the above quoted section of the Creek law, which before would have prevented a non-citizen from participating, was made inopera-

tive, but by the proviso the same result was attained."

But the court below, in support of its contention in this case, cited as an authority *Lamb* v. *Baker,* 27 Okla. 739, construing the above section 6 of the Creek agreement, holding that: where a Creek citizen died leaving surviving him heirs who had been enrolled as Seminole citizens, but who possessed "Creek blood," they were entitled to take the inheritance in preference to relatives more distantly related who were enrolled as Creek citizens; and further cited the case of *Hughes Land Co.* v. *Bailey,* 30 Okla. 194, as following the principle, under the same section, *supra* (Rec., p. 35). It is apparent that this is squarely in conflict and cannot be reconciled with the holding of the Federal Circuit Court in *Armstrong* v. *Wood, supra,* which should control. The decision of a federal court upon a federal question is controlling, and should be followed by the state courts on the same question. The court in *Lamb* v. *Baker* reached its conclusion solely upon a construction of the two provisos of said section 6, *supra;* holding that the first proviso provided for the descent, to-wit, to heirs who are Creek citizens, and descendants of Creek citizens which meant having *Creek blood,* though members of another tribe; and that the second proviso was intended to prevent an escheat in case there were

no such heirs as named in the first proviso. For the reasons we have stated this could not have ever been intended by the Creeks, as evidenced by their long expressed purpose and customs, which the court failed to consider or take note of. Even the court expressed its doubts about the correctness of its holding. Plainly, it was intended by these povisos that the descent should go to members of the Creek tribe, whether enrolled or not, for such members a l w a y s citizens of the tribe; and on failure of such citizen heirs, to the non-citizen heirs. The second proviso shows, if it shows anything, that the makers of the law intended the first proviso to mean this; it shows that citizen heirs only were intended in the first proviso, by the used term "non-citizen heirs" in the second, for otherwise the second proviso would cover one of the classes covered in the first as construed by the court below, to-wit: "non-citizen heirs" having *C r e e k blood,* which certainly was not intended as it would amount to an absurdity and confusion. Any "Creek descendant," or descendant of a "Creek citizen," would have *Creek blood.* Hence, the word "descendant" alone would have conveyed plainly the same meaning as given this term by the court. The word "Creek" as modifying the word "descendants," further shows our construction correct and logical. The act was dealing with members of the tribe; with heirs, citizen and non-citizen; and the word "Creek"

was used for a purpose, to-wit, to distinguish the citizen from the non-citizen. It dealt with only these two classes. It was not a question of *blood* or *no blood,* but it was a question of *citizenship* or *non-citizenship;* for, it is well known, and by no one better than the Creeks and the Commission at the time, that all Seminoles are of the same Indian *blood* as the Creeks, that they are all Creeks by *blood;* that the Seminoles at one time were a part of the Creek tribe and separated from them; and the Seminoles are known as the *runaway tribe;* they are the "wild hunters" of the Creeks; they speak the same language, have mostly the same customs and usages, and are of the same *blood.* This is a convincing reason why the word "Creek" has its significance as used in this connection; that it meant a Creek as distinguished from a Seminole, a member of one tribe as distinguished from a member of the other. The Commission, when negotiating said agreements, was dealing with *the tribe,* and it was the most natural thing conceivable that they and the tribe should provide that the lands of the tribe should descend to *members of the tribe.* Again, the Seminole lands were carved out of the Creek Nation, and they adjoin with only an immaginary boundary between; and it was very natural that jealousy should spring up between these tribes, prompting the desire to exclude non-citizens from participating in their respective lands; which

in fact was the case. The Creeks, consequently, had adopted the policy of excluding non-members of the tribe from inheriting the lands of the tribe, and the Seminoles, well knowing this and their former relationship, naturally did likewise. This they each accomplished by the agreements in question. This construction harmonizes with all the former legislation, the customs, usages and laws of these two tribes, and makes effective the plain language of these agreements, eliminating all speculation and strained construction.

The court below (Rec., p. 36) further gave as a reason for its holding in this case, section 36 of the Original Creek Treaty, 31 Stat. L. 861, *supra*, providing that Seminoles who settled in the Creek Nation might take allotments therein and that Creeks who settled in the Seminole Nation should be permitted to take allotments in that nation; and although it was not informed, as it says, whether this section was ever ratified, yet it considered this section a reason why said defendants in error in this case should inherit the said allotment, under said Seminole agreement. This section 36, as a well known matter of fact, was never ratified by either tribe, and failed and never became a part of said Creek agreement. The last paragraph of said section provides:

" This provision shall not take effect until

> after it shall have been separately and specifically approved by the Creek national council, and by the Seminole general council; and if not approved by either, it shall fail altogether, and be eliminated from this agreement without impairing any other of its provisions."

Having been rejected by both tribes, such fact would show just the reverse of the holding of the court below; and would be a powerful circumstance to show that both tribes rejected the very idea which the court said was in their minds, when it was presented to them. It shows, if it shows anything, that the intention of these tribes was as we have construed it to be above, or they would have adopted the provision. But they preferred to maintain a consistent course, as evidenced from the beginning, and distribute their lands to their members, and to no others, and thus avoid confusion and new and untried plans.

As expressly stated by said Hon. A. S. McKennon to the writer of this brief, several years ago, in speaking of the Creeks and Seminoles and these provisions of their supplemental agreements:

> " The members of each tribe manifested a desire to have their tribal property always go to their own people, and not to members of any other tribe, or to outside persons."

As a further reason for its decision, the court below says: "the right to share in the distribution of tribal property is not essential to citizenship"; while we presume the court intended to say the reverse, to-wit: that citizenship is not essential to the right to share in tribal property (Rec., pp. 34-35); and it cites a number of authorities in support thereof. An examination of those authorities discloses that they have no application to the question here, and are not constructions of the agreement in question here, or similar laws. But under this agreement, *citizenship was positively essential to the right to share in the distribution of tribal property,* for section 1 of said agreement says in imperative language that the rolls so made, "shall constitute the final rolls of Seminole citizens, upon which the allotment of lands and the distribution of money and other property belonging to the Seminole Indians shall be made, *and to no other persons.*" (Italics ours.) And we would not hazzard a statement to the contrary. As we have shown above, the same is true also under said Creek agreement.

> " The right of each individual to participate in the enjoyment of such property depended upon tribal membership."
>
> —*Sizemore* v. *Brady,* 235 U. S. 441-447.

Fourth Assignment or Specification of Error.

The said Supreme Court of the State of Oklahoma erred in holding and deciding that under said Seminole Supplemental Treaty, 31 Stat. L. 250, the said Annie Wadsworth, as the surviving wife of said Louis Cox, deceased, took a life estate or dower in said allotment of said Louis Cox, because she was not a Seminole citizen, but was a Creek citizen, and because said allotment was not in existence at the time of the death of said Louis Cox, but was made after his death; and said Louis Cox did not die seized or possessed of said allotment, and the said Annie Wadsworth, as the surviving wife of said Louis Cox, deceased, could have no inheritable interest or dower in said allotment.

As stated before, Louis Cox died July 4, 1901, before receiving his allotment, and thereafter, on June 28, 1902, his said allotment was made and set apart by the Government. At the time of his death he left surviving him his wife, said Annie Wadsworth, who is a citizen of the Creek tribe, duly enrolled as such opposite No. 7555 of the approved Creek roll. The court held that said Annie Wadsworth took dower in said allotment, under the provisions of chapter 53, Mansfield's Digest of the Statutes of Arkansas, then in force in Indian Territory, which provides:

> " *Sec. 2571.* A widow shall be endowed of the third part of all lands whereof her husband was seized of an estate of inheritance *(a)* at any time during the marriage, unless the same shall have been relinquished in legal form."

In construing this statute, it has been universally held by the Supreme Court of Arkansas that before the widow could be endowed of any part of the lands of her husband, he must in his lifetime at some time during the marriage, have been seized thereof. *Blakeney* v. *Ferguson*, 20 Ark. 547; *Drenner* v. *Walker*, 21 Ark. 539; *Tate* v. *Jay*, 31 Ark. 576; *Kirby* v. *Vantrece*, 26 Ark. 368; *Cockrill* v. *Armstrong*, 31 Ark. 580. The adoption by Congress of the above statute of Arkansas on dower, carried with it and included the construction thereof previously given it by said decisions of the Supreme Court of Arkansas. *Willis* v. *Eastern Trust & Bkg. Co.*, 169 U. S. 295. No reason exists why it did not. Congress evidently knew of such construction, and would have made an exception, if it did not intend to adopt it. And Louis Cox, having died before selecting or receiving said allotment, died seized of no estate, legal or equitable, therein; *Sanders* v. *Sanders*, 28 Okla. 59; *Scott* v. *Jacobs*, 40 Okla. 522; *Woodbury* v. *U. S.*, 95 C. C. A. 498; *McKee* v. *Henry*, 201 Fed. 74; *Stephens* v. *Cherokee Nation*, 174 U. S. 445; *Wallace* v. *Adams*, 143 Fed. 716; *Sizemore* v. *Brady*, 235 U. S. 441; and there-

fore no right of dower could exist in said Annie Wadsworth. In *Scott* v. *Jacobs, supra,* the court says, at page 523:

> "as Leona Tiger was enrolled and died before receiving her allotment, she died seized of no inheritable estate therein * * *, and as no *res* existed for the law to take hold of until November 18, 1901, the date of her certificate of allotment * * *."

And in *Sizemore* v. *Brady, supra,* the court, by Mr. Justice VAN DEVANTER, in speaking of such lands, at the bottom of page 466, says:

> " The right of each individual to participate in the enjoyment of such property depended upon tribal membership, and when that was terminated by death or otherwise the right was at an end. *It was neither alienable nor descendible."* (Italics ours.)

And again on page 449, says:

> " There was nothing in the agreement indicative of a purpose to make a grant *in praesenti.* On the contrary, it contemplated that various preliminary acts were to precede any investiture of individual rights. The lands and funds to which it related were tribal property, and only as it was carried into effect were individual claims to be fastened upon them."

These authorities conclusively show that there was no seizen of said land during the life of the deceased, which has been a necessary requisite to the existence of dower since King John's *Magna Charta* of June 15, 1215, 14 Cyc. 882. No reason whatever exists here why dower should be extended to Indian women where it never existed in favor of a white woman from time immemorial. Congress never indicated such intention, either express or implied. The court's conclusion would result in the holding that two kinds of dower are provided for by this section of the Arkansas statute, one in which seisen is not necessary, and one where seisen is necessary; giving dower to one class without seisen and denying it to another class at the same time and in the same jurisdiction. An absurdity never thought of.

The court cited *Cook* v. *Childs*, (Okla.) 152 Pac. 88, in support of its said holding (Rec., pp. 36-37), wherein it is held that such allotments, as in this case, descend to the heirs of the deceased in the same proportion as it would if the deceased had died seized thereof; and cites a number of decisions in support of the same, chief among which is *Shulthis* v. *McDougal*, 95 C. C. A. 615. But an examination of this case, and all the others, shows that there was no question of dower in them, but that the only question involved was one of descent in fee to the heirs. There-

fore, this rule could not be construed to apply to dower where seisen has always been essential in all cases. Annie Wadsworth *did not take as an heir,* for, if it is contended that she did, then she would be excluded because she is a Creek citizen, under the court's own holding. And for the reasons we have heretofore given relative to citizenship, she would be excluded in either event, because, as decided by the court below, she is a Creek citizen and does not even possess any "Seminole blood." "Marriage. Seisin. Death. Dower." Never otherwise.

Fifth Assignment or Specification of Error.

The said Supreme Court of the State of Oklahoma erred in granting leave to said plaintiffs in error to file a second petition for rehearing—after the judgment of the trial court had been affirmed and mandate sent to the trial court—and in withdrawing its said former or first decision and in taking up and reconsidering said cause and rendering a new decision and judgment reversing the judgment of the trial court and awarding and directing judgment for said allotment to said plaintiffs in error, and recalling the mandate issued on its first decision and judgment affirming the judgment of the trial court; all of which was done on the same day and without any notice to said defendant in error, D. Campbell,

or an opportunity to be heard, which deprived said D. Campbell of his said property and rights without due process of law and the right to be heard in violation of the rights guaranteed to him by the Constitution of the United States and the Fifth (Fourteenth, intended) Amendment to the Constitution of the United States, as shown by the record in said cause, and in denying the petition for rehearing of said defendant in error, D. Campbell, filed herein.

As shown by the record, at a subsequent term of said court, and *all on the same day*, to-wit, on March 21, 1916, and without any notice whatever to defendant in error D. Campbell, leave was granted plaintiffs in error to file second petition for rehearing, which has never been filed in the clerk's office, and which was considered and allowed, and the mandate issued on its first decision was stayed and recalled, said first opinion withdrawn, cause was resubmitted and heard, and a new opinion was rendered reversing the judgment of the trial court and remanding with instructions to render judgment for said plaintiffs in error in accordance with the opinion of that date. (Rec., p. 30.)

Rule 9 of the Supreme Court of Oklahoma, in part provides:

> " No oral argument will be allowed on an application for rehearing, except upon order of

the court; but if such application is granted, the cause shall be assigned for rehearing, and the clerk shall notify both parties or their counsel of the time when such rehearing will be had, and such time may be given for argument or brief as the court shall allow."

And Rule 10 of said Supreme Court, provides in part:

"In any case in which a petition for rehearing is denied, or in which an opinion is rendered on rehearing, no further motions or applications for rehearing or review will be allowed, and the clerk shall not file such motions or applications, except by leave of court first obtained."

Plaintiff in error had a right to rely on these rules. He was entitled to the benefit of the rule declaring that no further application for rehearing would be allowed, after former petition for rehearing was denied. And when such rehearing was granted, he was entitled to notice when such rehearing was to be had, and an opportunity to be heard thereon; all of which was denied him. And a denial of these rights, which are accorded to all others, constituted a denial to him of due process of law and the rights guaranteed to him by the Fourteenth Amendment to the Constitution of the United States.

—*Kennard* v. *Louisiana, ex rel. Morgan,* 92 U. S. 480;

Pennoyer v. *Neff*, 95 U. S. 714;
Chicago, B. & Q. R. Co. v. *Chicago*, 166 U. S. 226;
Turpin v. *Lemon*, 187 U. S. 51;
Holden v. *Hardy*, 169 U. S. 366.

For the foregoing reasons, we respectfully insist the said decision of the Supreme Court of Oklahoma in this cause is erroneous, and should be reversed and remanded with instructions for judgment for this plaintiff in error.

Respectfully submitted,

C. DALE WOLFE,
Counsel for Plaintiff in Error.

Wewoka, Okla., August 18, 1917.

In the

Supreme Court of the United States

October Term, 1917

No. 321

D. CAMPBELL, - - - - - - Plaintiff in Error,

VERSUS

ANNIE WADSWORTH, MAGGIE BEAMORE and NANCY ALEXANDER, - Defendants in Error.

REPLY BRIEF OF PLAINTIFF IN ERROR

IN ERROR TO THE SUPREME COURT OF THE STATE OF OKLAHOMA

By permission of the Court, we desire to present a reply to the brief of defendants in error very recently filed.

Counsel for defendants in error first contend that to obtain a proper construction of Section 2 of the Seminole Supplemental Treaty, Chapter 49 of Mansfield's Digest of the Statutes of Arkansas must be construed

in conjunction therewith. This is not true in this case, as it is the Treaty that places the limitation upon the statute, and the statute could not and does not in any way limit or modify the Treaty. The Treaty fixes the class to whom the property shall go, and then prescribes that it shall go to those in said *class* in the order named in the statute. The statute has nothing to do in determining the class, to-wit: "Heirs who are Seminole citizens," and was never so intended. This statute never was in pari materia in fixing this class; it contains not a word that would even tend to throw any light into the determination of "heirs who are Seminole citizens." Counsel then refer to the purported laws of the Seminole Tribe, as translated by G. W. Grayson, whom they say was official interpreter for the Union Agency. While it does not appear that Grayson was ever official interpreter for the Seminole Tribe, or that he was official interpreter for the Union Agency, as the certificate thereto does not show that he acted as such; and while he was a Creek and not a member of the Seminole Tribe, yet it is well known that these laws never had any reference to real estate, and that the Tribal Council intended them to only cover personal property, which might not be governed by other laws. This was the sole purpose of their enactment, as the Council well knew that the Arkansas law of descent and distribution relative to real estate had been put in

force by Congress, and by their own solemn treaty, three years before. It is too plain for argument that these tribal laws never had any reference to real estate, and hence had no application to the subject matter and never were so intended, and therefore were never in pari materia.

But the only laws in pari materia are those which we have set forth on page 30, et seq., in our brief, and to which counsel for defendants in error have made no reference whatever in their brief. We must assume that they considered our argument correct with reference thereto, or they would have at least indicated what they considered a correction. But let us again merely refer to these laws. The Act of Congress of June 10, 1896, directed the Dawes Commission to proceed at once to hear all applications for citizenship in any of the Five Civilized Tribes, and in so doing to give full force and effect to the rolls, usages and customs of said tribes, and it was given full power to obtain all evidence to determine such rights of citizenship, and such rolls so prepared by it were declared to be true and correct rolls of persons entitled to citizenship in such tribes;and the *Act confirmed the rolls of citizenship of the several tribes then existing.* This very Act confirmed each of the defendants in error as citizens of the Creek tribe, for they then appeared on the Creek tribal enrollment, of Tuskegee Town, of 1890 on page 214 thereof, and

resided in the Creek Nation. (Census card No. 2523, R. 20-21.) Thus they were each confirmed as Creek citizens by Act of Congress in 1896, five years before the death of Louis Cox, and six years before his allotment was made which, as we shall hereafter see, is the date the descent was first cast. (So it is apparent that counsel's statement that said children "were not enrolled as Creek citizens until subsequent to the death of the father", is not correct.) The next law on the subject, was the Curtis Act of June 28, 1898, amendatory of the previous Act and completely covering the subject anew. It in substance confirmed all that had been done under the former act, extended the power and time of the Commission to complete its work as a continuation of its previous authority, and again re-affirmed that such rolls "shall alone constitute the several tribes which they represent". Then came the Act in question, the Seminole Supplemental Treaty, Act of June 2, 1900, which, in referring to the rolls of citizenship to be completed by the Commission, expressly refers to the Curtis Act as, "pursuant to the Act of Congress approved June twenty-eight, eighteen hundred and ninety-eight," and again provides that the rolls so made, "as provided by said Act of Congress shall constitute the final rolls of Seminole citizens". Here. indeed, are statutes in pari materia, and cover this subject completely. Certainly the laws mentioned by

defendants in error never had any reference or application to the subject here, and under no circumstances could they be considered as "subsequent legislation" on the subject.

Counsel contend, on page 9 of their brief, that our contention would probibit after-born children from inheriting. We answer no, and we make no such contention. We have expressly stated otherwise in our brief; that if such children were in fact Seminole citizens under the laws, customs and usages mentioned, they were always Seminole citizens, whether enrolled or not; but certainly those duly enrolled as citizens of another tribe could not be a Seminole citizen and could not inherit under the Treaty in question.

They cite *Hughes Land Co.* v. *Bailey*, 30 Okla., 194, construing the Creek Supplemental Treaty on descent and distribution. While this case is based on a different statute, with much different language, we have discussed this matter thoroughly in our brief and do not consider it necessary to repeat same here again; but this decision is in plain conflict with the decision of the United States Circuit Court in *Armstrong* v. *Wood*, 195 Fed. 137, which controls in the construction of said Federal Statute, and which the State Supreme Court should have followed, in rendering its opinion *thereafter*.

Counsel contend, on page 4, that our construction

would be strained and would violate "the most elementary canons of construction." And they ask the question, "Why? To declare a forfeiture." And they hold up to the Court, as an argument, the feigned spectacle of forfeiture of the inherited estate of "widow and orphan children" as "the most abhorrent of forfeitures." We understand that it is necessary for the person to be the possessor of the thing forfeited before there can be a forfeiture of the same. Defendants in error never possessed any right in the land in question to be forfeited. They waited ten years before they took any step to prevent this so-called abhorrent forfeiture. They never believed they had any right in this property, or they would have taken prompter steps to avail themselves of its use. No attorney familiar with the laws in question would have even advised them that they had any right in the same; and it remained until such a late date for them to be advised that they had such a right, by counsel, we are compelled to believe, unfamiliar with said laws, as shown by the many extreme contentions made by counsel for defendants in error in their brief. Defendants in error, as we have shown, were enrolled on the Creek tribal roll in 1890, and this enrollment as such Creek citizens was confirmed by the Act of June 10, 1896, which related back to the initial enrollment. This was recognized by the Curtiss Act of June 28, 1898, and again by the Supple-

mental treaty. Their status was fixed as Creek citizens in 1890. They were repeatedly given the right to appeal and to have such status changed, if they were entitled to a change, but they did not appeal, and under the provisions of said laws their status became final. They were each on the Creek Pay Roll of 1895 (R. 20-21.) The Commission was commanded to respect and give full force to said status. Having been at all times Creek citizens, and recognizing that their status as such citizens was fixed since 1890, they each make application for enrollment on the final Creek Rolls as Creek citizens May 18, 1901, which enrollment as such citizens was finally approved by the Secretary of the Interior March 28, 1902, which related back again to their initial tribal enrollment in 1890 (R. 20-21.) The action of defendants in error, the Commission and the Secretary of Interior are thus far perfectly regular, and pursuant to the governing laws. Now defendants in error in this case come and solemnly agree, in their agreed statement of facts, that they "are members of the Creek Tribe of Indians and *duly enrolled* opposite Creek Indian Roll—Nos." etc., and "that no conveyance has ever been made by said plaintiffs to any one." (R. 20.) They say they were *duly* enrolled as Creek citizens. They make no complaint of any imagined neglect of the Commission or of Louis Cox. They establish the *fact* of their status,

upon which to apply the law in this case. And yet, even in the face of this duly established fact, their counsel now insist that "they are members of the" Seminole Nation. (Brief, page 16.) But such contention, without support of reason or law, needs no further consideration. The *fact* upon which the case is submitted, established both by law and the solemn agreement of the parties, is *that they are Creek citizens* and *duly enrolled as such.* In view of this, it would, indeed, require the Court to render a most "phenominal decision," to hold that they "are Seminole citizens." To so hold would convict Congress and the Commission of the most stupid ignorance and folly. It would be necessary to hold that they knew not the meaning of the language they employed; that they should have stopped with the language in the Treaty: "shall descend to his heirs," and should have eliminated: "who are Seminole citizens," because this would have conveyed the meaning given the clause by the Court below and contended for by counsel for defendants in error. We can never believe that Congress or the Commission was so stupid.

In view of the fact that counsel base their argument mostly on the forfeiture-of-inheritance-of-widows-and-orphans ground, which they claim would be the result of sustaining our argument, we wish to say that inheritance and heirs are only those fixed by stat-

ute. This is the only way they are determined, and to the statute alone we must look to determine who are heirs. Especially is this true with the Indians. The statutes of different states fix different heirs in many instances, and yet each state believes it has the most just laws fixing heirs. A person could not complain, or urge as a reason that governing statutes of Oklahoma should not be unheld because it excluded him as an heir, because the statute of Arkansas would make him an heir, if applicable, and therefore is the most just. In Arkansas, the father was the first heir to take; in the Seminole Nation this same law was reversed by the Treaty in question and the father was either excluded or postponed to the very last as an heir. Yet each were considered the most just by the people affected. There was a reason for this limitation as well as the limitation to "heirs who are Seminole citizens." The former was a moral reason, the inability to identify the father and the tribal custom that the mother was closer to the child; the latter was a tribal reason, the established policy of the tribe to keep the then tribal property within the tribe, to limit its descent and distribution to the members thereof. Counsel admit the intention to enact the one limitation, but deny the other. Why?

Counsel further contend (on page 9) that at the time of the death of Louis Cox, July 4, 1901, the said

children's "legal status as his heirs was fixed and their right became vested." There could be no vested right or interest in tribal land, and at the date of the death of Louis Cox this land was owned by the Tribe. The said allotment was not made until June 28, 1902, (R 19) and not until that date did any individual rights attach or become vested. *Scott* v. *Jacobs*, 40 Okla. 522; *Sizemore* v. *Brady*, 235 U. S. 441, and authorities cited in our brief, pages 62 to 63. We presume counsel overlooked these authorities, or they would not make the statement. However, to be certain that they are not overlooked, we again quote a few lines from same. In *Sizemore* v. *Brady*, *supra*, at page 449, the Court says:

> "There was nothing in the agreement indicative of a purpose to make a grant in praesenti. On the contrary, it contemplated that various preliminary acts were to precede any investiture of individual rights. The lands and funds to which it related were tribal property, and only as it was carried into effect were individual claims to be fastened upon it."

And at page 466:

> "The right of each individual to participate in the enjoyment of such property depended upon tribal membership, and when that was terminated by death or otherwise the right was at an end. *It was neither alienable or descendible.*" (Italics ours.)

In *Alcott* v. *Jacobs*, *supra*, the Court says:

> "as Leona Tiger was enrolled and died before receiving her allotment, ***she died seized of no inheritable estate therein,*** * * * and as no res existed for the law to take hold of until November 18, 1901, the date of her certificate of allotment * *" (Italics ours.)

These same authorities completely answer the contention that the defendant in error, Annie Wadsworth, took a dower in said lands. When Louis Cox died said lands belonged to the Seminole Tribe, and he "died seized of no inheritable estate therein;" his rights therein were "at an end;" it was neither alienable or descendible." In as much as the laws of Arkansas only granted dower in lands whereof the "husband was seized of an estate of inheritance at any time during marriage," it is too plain for further argument that Louis Cox never was seized of any estate of inheritance therein, and therefore there could be no dower. We are yet amazed at the possibility of the opinion in *Cook* v. *Childs*, as it is not supported by a single authority, and it is contrary to every Arkansas decision ever rendered on the subject, and the plain language of the Arkansas statute. *Kirby* v. *Vantrece*, cited by counsel, does not sustain their contention. Louis Cox never had any estate—legal, equitable, or of any character, in the land in question. Let this be borne in

mind when considering counsel's repeated contention that this land should go to the defendants in error, on equitable grounds, instead of the sister of Louis Cox who is not a stranger to him, notwithstanding the plain language of the Treaty directing the descent and distribution of this property. We fear counsel have let their zeal lead them astray in making such contention. *Cook* v. *Childs* certainly could not yet become a rule of property.

Counsel for defendants in error in their brief (page 29-31) lastly insist that this case should be dismissed, because it was brought up by writ of error when it should have been brought up by writ of *certiorari* as provided by the Act of Congress approved September 6, 1916; and they cite *Prairie Oil & Gas Co.* v. *Carter*, No. 849, October Term, 1916, in support of their contention. They quote at length Section 2 of the Act, providing for writs of error and writs of *certiorari* to highest Courts of the states, but they fail to mention Section 7, the saving clause, which is as follows:

> "Sec. 7. That this Act shall take effect thirty days after its approval, but it shall not apply to nor affect any writ of error, appeal, or writ of certiorari theretofore duly applied for. The right of review under existing laws in respect of judgments and decrees entered before this Act take effect shall remain unaffected for the period

> of six months thereafter, but at the end of that time such right shall cease.''

Under this Section this appeal was properly prosecuted by writ of error. On May 31, 1916, the petition of plaintiff in error for rehearing in the Supreme Court of Oklahoma was overruled and final judgment or decree was entered therein (R. p. 39.) On November 20, 1916, this writ of error, with record, was duly filed in this Court. So this case was filed amply within the six months provided in said Section, and is protected by the provision that:

> ''The right of review under existing laws in respect of judgments and decrees entered before this Act takes effect shall remain unaffected for the period of six months thereafter.''

The case of *Prairie Oil & Gas Co.* v. *Carter supra*, is not in point under this Section, as it was finally decided in the State Court after the Act and was not filed as provided in said Section, and therefore was not within this saving clause.

All of the questions in the case at bar, under Section 237 of the Judicial Code before it was amended September 6, 1916, were reviewable by writ of error, and therefore the same rights are preserved by said Section 7, *supra*. Even under Section 237, as amended, a leading question in the case is presented, upon which the Supreme Court of Oklahoma based its opinion and

upon which counsel for defendants in error make their leading contention, which is reviewable by writ of error, to-wit: The alleged wrongful act of the Dawes Commission in enrolling defendants in error as Creek citizens when it is alleged that it should have enrolled them as Seminole citizens under the provisions of said Treaty. This drew in question the validity of an authority exercised under the United States, and the decision was against its validity.

We have not attempted to answer all the contentions of counsel in their brief, as we consider that we have presented them fully in our brief formerly filed.

We very respectfully submit that the contentions made by counsel in their brief for defendants in error are not well taken, and that this cause should be reversed with proper instructions, as requested in our former brief.

Respectfully submitted,

C. DALE WOLFE,

Counsel for Plaintiff in Error.

Wewoka, Oklahoma, April 23, 1918.

-9-

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No. [redacted]72

In the

Supreme Court of the United States.

October Term, 1917.

D. CAMPBELL, - - - - - - - *Plaintiff in Error.*

VERSUS

ANNIE WADSWORTH, MAGGIE BEAMORE and NANCY ALEXANDER, - *Defendants in Error.*

IN ERROR TO THE SUPREME COURT
OF THE STATE OF OKLAHOMA.

BRIEF OF DEFENDANTS IN ERROR.

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In the

SUPREME COURT OF THE UNITED STATES.

October Term, 1917.

No. 321.

D. CAMPBELL, - - - - - - - - *Plaintiff in Error.*

vs.

ANNIE WADSWORTH, MAGGIE BEAMORE and NANCY ALEXANDER, - *Defendants in Error.*

IN ERROR TO THE SUPREME COURT
OF THE STATE OF OKLAHOMA.

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In the

SUPREME COURT OF THE UNITED STATES.

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D. CAMPBELL, - - - - - - - *Plaintiff in Error.*

vs.

ANNIE WADSWORTH, MAGGIE BEAMORE and NANCY ALEXANDER, - *Defendants in Error*

IN ERROR TO THE SUPREME COURT

OF THE STATE OF OKLAHOMA.

BRIEF *of* DEFENDANTS *in* ERROR.

Supplemental Statement of Case.

The statement of the case as set out by the plaintiff in error is in substance the agreed statement of facts upon which this case was tried in the court below and upon which judgment was rendered in the

Supreme Court of the State of Oklahoma. Therefore, we have no corrections or modifications to make. The facts are absolutely uncontradicted that Louis Cox, the deceased, whose allotment is in controversy in this case, was enrolled as a citizen of the Seminole Nation and at the time of his death was the legal husband of Annie Cox, now Annie Wadsworth, one of the defendants in error in this case, and that he is the father of Maggie Beamore, nee Cox, and Nancy Alexander, nee Cox, his children and the daughters of Annie Wadsworth, and that the said defendants in error are enrolled members of the Creek tribe. The record further discloses that one of the said daughters was a minor at the time of the death of their father and that both were minors at the time of their enrollment in the Creek Nation by the mother, who was a member of the Creek tribe. (Rec., pp. 19-22.)

ARGUMENT *and* AUTHORITIES

A proper interpretation of section 2 of the Seminole Supplemental Treaty of October 7, 1899, ratified by the Act of Congress approved June 2, 1900 (31 Stat. L. 250), must be made in conjunction with that portion of the laws of the State of Arkansas put in force by the provisions of said acts, to-wit: Section 1820, Carter's Indian Territory Statutes, section 2522, Mansfield's Digest, which is as follows:

> "When any person shall die, having title to any real estate of inheritance, or personal estate, not disposed of, nor otherwise limited by marriage settlement, and shall be intestate as to such estate, it shall descend and be distributed, in parcenary, to his kindred, male and female, subject to the payment of his debts and the widow's dower, in the following manner:
>
> "*First.* To children or their descendants in equal parts."

It is a well-known rule of law that in construing statutes, the courts will not look to a single phrase embodied therein, as is contended by the plaintiff in error in this case, but will construe the entire act. We believe the true rule for interpretation of statutes is laid down by the Supreme Court of the State of Oklahoma, in the case of *deGraffen-*

ried v. *Iowa Land & Trust Company*, 20 Okla. 687, where the court says:

> "In arriving at the intent of the legislature in enacting a statute, not only must the whole statute and every part of it be considered, but where there are several statutes *in pari materia* they are all, whether referred to or not, to be taken together with one part construed with another in the construction of any material provision. Statutes are *in pari materia* which relate to the same person or thing, or to the same class of persons and things."

Since sections 1 and 2 of the agreement, as ratified by Act of Congress, relate to the same subject matter they should be construed together and if possible harmonized instead of being made repugnant and conflicting as plaintiff in error would have them. Otherwise one of the most elementary canons of construction would be violated and a strained construction would be brought about. Why? To declare a forfeiture. Yet the law abhors a forfeiture, and the courts will usually so rule as to avoid one if possible. And the forfeiture of the inherited estate of a widow and orphan children would seem to be quite the most abhorrent of forfeitures—if there are degrees in such a matter.

It is further insisted by the defendants in error that courts are not limited in their researches to legal literature but may consult collateral works on

Sciences and Arts or History, touching the topic on trial, and may also appeal to the public archives for this purpose. *Davison* v. *Gibson*, 56 Fed. 446, 5 C. C. A. 546. By reference to the public law of the Seminole Nation as interpreted by G. W. Grayson, the official interpreter of the Union Agency at Muskogee, Oklahoma, under the certificate of the Secretary of the Interior, we find that the laws of the Seminole Nation provide for the inheritance of estates by the children of deceased Seminoles. We herewith submit said Seminole law as touching upon the facts involved in this case for the purpose of showing the impossibility of the Seminoles having in view the narrow construction contended by the plaintiff in error, to-wit: the disinheriting of their own children.

"CHAPTER XLIV.

"*Sec. 1.* If any citizen of the Seminole Nation shall die leaving no children, his property shall be given to his nearest relatives.

"*Sec. 2.* In case a person dies leaving children, the property of the deceased shall be turned into the hands of one who shall be eighteen (18) years of age.

"*Sec. 3.* If there be none of his children eighteen (18) years of age, then it shall become the duty of the chiefs to appoint a guardian for them.

"*Sec. 4.* The chiefs shall make an agreement with such guardian respecting the remu-

neration for his services and he shall take charge of, and manage the affairs of the estate until one of the heirs shall reach the age of eighteen (18) years, when he shall turn the estate over to the one reaching his or her majority.

"*Sec. 5.* If there be no relatives of a deceased person, then an heir may be sought out among his relatives whose relationship does not extend beyond that of the fourth degree of consanguinity.

"Passed by the National Council January 30, 1903.

"T. S. McGeisey, Clerk. Okfusky Miller, Chairman.

"Approved January 30, 1903. Hulbutta Mikko, Prinl. Chf. Sem. Na.; Thomas Little, 2nd Chf. Sem. Na."

"CHAPTER XLV.

"*Sec. 1.* The estates of all persons dying in the Seminole Nation shall be in the hands of the laws of the nation.

"*Sec. 2.* All property and all accounts held against the deceased shall be brought together at one time and place appointed by the chiefs.

"*Sec. 3.* The chiefs shall pay all just debts against the deceased and whatever shall remain of the estate after all just debts shall be paid, shall belong to the nearest relative.

(The five succeeding sections of the act not involving any point in controversy in this case are not copied.)

"Passed by the National Council March 24, 1903.

"T. S. McGeisey, Clerk. Okfusky Miller, Chairman.

"Hulbutta Mikko, Prinl. Chf. Sem. Na. Thomas Little, 2nd Chf. Sem. Na."

"*Department of the Interior—Commissioner to the Five Civilized Tribes:*

"This is to certify that I am the officer having custody of the records pertaining to tribal affairs, of the Choctaw, Chickasaw, Creek, Cherokee, and Seminole Tribes of Indians, and that the attached is a true and correct copy of a portion of the tribal laws of the Seminole Nation, as shown by the records of this office, as translated by G. W. Grayson.

"J. G. Wright,
"Commissioner to the Five Civilized Tribes."

By section 1 of the Seminole treaty cited by the plaintiff in error a portion of which provides that the Commission

"Shall place on said rolls the names of all children born to Seminole citizens up to and including the thirty-first day of December, eighteen hundred ninety-nine, and the names of all Seminole citizens then living;"

two classes are considered: *First*, the children of Seminole citizens not considered by the act as Seminole citizens; *second*, all Seminole citizens then living. The first class named includes the children of

Louis Cox, the defendants in error Maggie Beamore and Nancy Alexander, one of whom, to-wit: Nancy Alexander was a minor, and both of whom were omitted from the rolls by the Commission in plain violation of the Act of Congress. The second act includes Louis Cox, the decedent, who was the father of the two defendants in error, and who was the husband of the remaining defendant in error; said Louis Cox was duly enrolled by the Commission April 2, 1901, and his allotment is in controversy in this case. A decision of this case upon the theory suggested by the plaintiff in error makes it necessary for the court to render a phenomenal decision. In other words the court must decide that the legitimate children and wife of a Seminole citizen are aliens both by blood and nationality by reason of the simple fact that they are enrolled on a different Indian roll from that of the father; and in this connection it will be noted by the court that the widow and children were not enrolled as Creek citizens until subsequent to the death of the father. That fact should be taken in their favor. Under the complex situation the widow had a right to elect as to what roll the children should be placed upon after the death of the father, and the fact that she chose to enroll them on the Creek instead of the Seminole roll could not be urged against the children because if it is true as claimed by the plaintiff in

error that they are Creek citizens their right to election of citizenship was not exercised until after the death of the father and it could in no way change the status of the children because at the death of the father their legal status as his heirs was fixed and their rights became vested. (From the Creek census cards referred to (Rec., pp. 19-22) in plaintiff in error's brief, page 3, it appears that citizenship certificates were issued by the Department of the Interior to Annie Cox, now Wadsworth, and Maggie Cox, now Beamore, July 26th, 1901, and to Nancy Cox, now Alexander, July 12, 1901, and their said enrollment was not finally approved until March 28th, 1902.)

If the contention made by the plaintiff in error is correct it would prohibit all after-born children or children not then in existence from inheriting. From a full and complete view of the case taking into consideration the prejudice of Indians against non-citizens of the tribes it clearly appears that the original object the various tribes had, in excluding non-citizens from inheriting was to exclude only non-citizens by blood and not their own children. The Supreme Court of Oklahoma in awarding the allotment of Louis Cox, the land in controversy, to his legal widow and their children is simply following the well known and well defined legal precedents already established as to similar provisions govern-

ing inheritance of the lands allotted to the other tribes. In the case of *Hughes Land Co.* v. *Bailey*, 30 Okla. 194, 120 Pac. 290, the court in construing a similar provision in reference to the descent of lands in the Creek Nation held that in a provision of said statute which is as follows:

> "That only citizens of the Creek Nation, male and female, and their Creek descendants, shall inherit lands of the Creek Nation;"

the phrase "Creek descendants" did not mean enrolled Creeks but meant the children of the deceased, having reference to the blood of the father, not the tribal enrollment, whether enrolled or not. Quoting from the syllabus of the case, we have the following:

> "Under the laws of descent and distribution provided by section 6 of the Act of Congress, approved June 30, 1902 (Act June 30, 1902, c. 1323, 32 St. at L. 500), the daughters of Creek blood of a deceased Creek allottee, inherit the allotted lands of said intestate to the exclusion of the brother of the half-blood of the intestate, who is a citizen of the Creek Nation, though such daughters are not enrolled citizens of the Creek Nation, but instead are enrolled as members of the Seminole Nation."

We insist that the same is true of the Seminole statute, that the Seminoles did not mean to exclude their children which is emphasized by the fact that the statute specifically provides that the names of all

children born to Seminole citizens up to and including the 31st day of December, 1899, should be placed upon the rolls, the intent being in this act, as in the Creek act, to prevent the estate or lands of the nation from going outside of the blood kindred. There can be no reason given, either in law or conscience, why a child should be denied the inheritance provided for him by the organic law on the subject simply because the father and the Commission had jointly neglected to have him enrolled on the Seminole roll, and secondly, for the mere reason that the father had neglected to select his allotment at the time of his death. While it may be true that a small portion of the act, to-wit: that part which states "shall descend to his heirs who are Seminole citizens," if taken by itself, might bear out such an interpretation, the act construed as a whole, and especially construed in the light of subsequent legislation of the Seminole tribe, does not limit the act to any such interpretation or construction.

The Supreme Court of the United States in the noted case of *Marchie Tiger* v. *Western Investment Company*, 221 U. S. 286, lays down the following rule in regard to subsequent legislation in construing Acts of Congress involving the same subject matter. Quoting from the syllabus we have the following:

> "Subsequent congressional legislation may be considered as an aid to the interpretation of prior legislation upon the same subject."

From the foregoing it is clear that the Federal Supreme Court was largely influenced by the subsequent Act of Congress dealing with the same subject matter in finding reason for overruling the opinion of the State Supreme Court rendered in said case (21 Okla. 630), holding the lands in controversy restricted, instead of unrestricted. Applying the words of Mr. Justice DAY, who delivered the opinion of the court, we have the following:

> "The construction contended for by the defendants in error places Congress in the attitude of requiring such conveyances to be made with the approval of the Secretary of the Interior for the time between the passage of the Act of 1906 and the expiration of the period named in the Act of 1902, with unrestricted power thereafter to make such conveyances without such approval. Such construction is inconsistent with the subsequent legislation of Congress upon the same subject, and which proceeds upon the theory that, in the understanding of Congress, at least, restrictions still existed so far as the inherited lands of full-blood Indians were concerned."

Applying the same rule to the subsequent acts of the Seminole Nation of Indians on the same subject matter, to-wit, the laws of descent and distribu-

tion as passed by the Seminole Nation in January, 1903, and heretofore fully set out in this brief, it is evident that the Seminoles, at least understood that their own children should inherit their land and while it is conceded that the Seminoles, at that time, to-wit, January, 1903, were perhaps without authority to pass any law relative to descent and distribution of their own property, they unquestionably believed they had such right, and whether such right existed or not we believe that this court should look to their intentions as expressed in said act in considering this statute, because the provisions of this subsequent act which, according to our best information was merely putting into effect the original Seminole law on the subject which had been in force in the Seminole Nation from the time immemorial as a part of their organic law or custom, the spirit of which is absolutely in accord with the language of the act under consideration, which provides for the placing on the rolls of the children of all Seminole citizens. The law, as quoted is as interpreted and translated by G. W. Grayson, the official interpreter of the Union Agency at Muskogee, Oklahoma, and is the best available, for the reason that the acts of the Seminole Nation seem never to have been published in the English language. It will be seen by the cases heretofore passed on by the Supreme Court of Oklahoma and by the Federal Court

of the Eastern District of Oklahoma, that the courts have been liberal in allowing the kindred, even though foreign by blood, an inheritance in the lands of their deceased relatives, both by blood and affinity.

—*Bodle* v. *Schoenfelt*, 22 Okla. 94;
Hawkins v. *Stevens*, 24 Okla. 849;
Lamb v. *Baker*, 27 Okla. 739;
Armstrong v. *Wood*, 195 Fed. 137.

It occurs to us that in the case at bar every rule of justice and reason should allow these two daughters and the widow to inherit because of the fact that the Seminole and Creek Indians are very closely related; in fact they are a parcel of the same tribe, their history, traditions and language being practically the same, and they are, for all intents and purposes, the same people. Quoting from the Handbook of American Indians, edited by Frederick Webb Hodge, being part 2 of Bulletin 30, Bureau of American Ethnology, page 500, we have the following:

> "*Seminole (Creek: Sim-a-no-le, or Isti simanole, 'Separatist,' 'Runaway').* A Muskhogean tribe of Florida, originally made up of immigrants from the Lower Creek towns on Chattahoochee r., who moved down into Florida following the destruction of the Appalachee *(q. v.)* and other native tribes. They were at first classed with the Lower Creeks, but began to be

known under their present name about 1775. Those still residing in Florida call themselves Ikaniukasalgi, 'peninsula people' (Gatschet).

"The Seminole, before the removal of the main body to Indian Territory, consisted chiefly of the descendants of Muscokee (Creeks) and Hitchiti from the Lower Creek towns, with a considerable number of refugees from the upper Creeks after the Creek war, together with remnants of Yamasee and other conquered tribes, Tuchi, and a large negro element from runaway slaves. When Hawkins wrote, in 1799, they had seven towns, which increased to twenty or more as they overran the peninsula."

And again, quoting from the same volume, page 501, we have the following:

"Those removed to Oklahoma were subsequently organized into the 'Seminole Nation' as one of the so-called Five Civilized Tribes. In general condition and advancement they are about on a level with their neighbors and kinsmen of the Creek Nation. In common with the other tribes they were party to the agreement for the opening of their lands to settlement, and their tribal government came to an end in March, 1906." * * *

"The Seminoles still residing in the S. part of Florida, officially estimated at 358 in 1900, but reduced to about 275 in 1908, remain nearly in their original condition. Within the last few years the government has taken steps to secure to them a small permanent reservation to

include their principal settlements. In general characteristics they resemble the Creeks, from whom they have descended." * * *

We further insist that children are members of the same nation as the father, and especially is that true of minor children. The age of Nancy Alexander, formerly Nancy Cox, is proved by the certified copy of census card (Rec., pp. 19-22), to be 17 years on the date of her enrollment on May 27, 1901, so that she was still a minor at the time of her father's death July 4, 1901. And especially is that so because one of the most essential parts of the Statute of Descent of the State of Arkansas, as put in force by the Act of Congress under consideration, was that part allowing children to inherit from their parents heretofore referred to on page 3 of this brief, and in construing the Act of Congress and said statute together it is impossible to read that part of the Arkansas law out of the organic act which provides that the children shall inherit from their parents first.

It is lastly insisted that even if the selection had not been made by Louis Cox, at the time of his death he was, nevertheless, seized of an inheritance within the meaning of the Arkansas Statute capable of being transmitted to his heirs, as defined in the following case, to-wit, *Kirby* v. *Vantrece*, 26 Ark. 368:

> "Under the former territorial statute, to sustain the right of dower, the husband must have had a strict legal title, but under the later statute it is only necessary that he be seized of an estate of inheritance. * * * if he have so perfect an equity as to entitle him to a legal title in fee, whenever demanded, he would, in the language of the statute, be 'seized of an inheritance' to which the right of dower would attach upon his death."

In passing upon the statute in controversy it is of the utmost importance that the court bear in mind the fact that the descent contemplated under said act and the law under consideration by Congress were the laws of Arkansas, as put in force in the Indian Territory at that time. By reference to the act itself it will be seen that the Indians intended to make a slight change in the provisions of the laws of the State of Arkansas relative to descent and distribution. This is made apparent by the statement in Act of Congress, to-wit:

> "provided that in all cases where such property would descend to the parents under said laws the pay shall first go to the mother instead of the father, and then to the brothers and sisters and their heirs, instead of the father."

This was to harmonize the Arkansas law with the well known Indian custom of the Creek and Seminole tribes, which provided that the mother was a nearer

relative than the father (*deGraffenried* v. *Iowa Land & Trust Co.*, 20 Okla. 687), thereby making the estate pass to the mother first instead of the father first as is a rule in Arkansas, governing new acquisitions, otherwise said provision would have been a nullity.

In answer to brief of counsel for plaintiff in error, page 64, where they criticise the case of *Cook* v. *Childs* (Okla., 152 Pac. 88), we will simply answer by saying that the said opinion is in conformity with the decisions on kindred questions handed down by the Supreme Court of the State of Arkansas in one of the earlier cases, and it is a principle too well known to need argument or citations of authorities, that whenever a law is adopted the interpretation of said law by the highest court of such state is made the law of the state adopting such statute, and is the paramount law of such state. In the Arkansas case referred to, to-wit, *Kirby* v. *Vantrece*, 26 Ark. 368, the Supreme Court of the State of Arkansas in construing the identical statute in force in Indian Territory in regard to dower at the time of the death of Louis Cox which is as follows (Sec. 1859, Carter's Ind. Ter. Statutes, and Sec. 2571, Mansfield's Digest of Arkansas):

> "A widow shall be endowed of the third part of all the land whereof her husband was seized of an estate of inheritance at any time

> during the marriage, unless the same shall have been relinquished in legal form."

settles the question that a legal title is not necessary in order to vest the widow with a dower interest.

In the Arkansas case it will be observed that the court holds that the word "inheritance", as used in said statute, does not mean an actual seizure or an actual estate in possession. The court contents itself with stating that he is seized of an inheritance within the purview of said act, if he have so perfect an equity as to entitle him to a legal title in fee, whenever demanded. There is no doubt as to the correctness of the proposition that Louis Cox could have demanded a patent or a title to said land in fee prior to the time of his death. The record discloses that his enrollment had been approved; that he was duly enrolled as a Seminole Indian citizen and immediately upon the approval of said Act of Congress, to-wit, June 2, 1900 (31 Stat. L. 250), and his enrollment, which was approved April 2nd, 1901, more than three months prior to his death, he was entitled to demand a deed for his said land and we insist that he was seized of an estate of inheritance within the meaning of the Arkansas statute then in force. The lands of the Seminole Nation had been surveyed and such particular pieces of land segregated and divided and all that was necessary for Louis Cox to do was to demand a patent to his said allotment.

If we are correct in our assumption of the fact that Louis Cox was seized with such an inheritance as would entitle him to a legal title in fee, the said estate vested in Louis Cox, descended to his heirs at law by the single operation of law, to-wit, the Act of Congress providing for the allotment of lands of the Seminole Nation, then we are entirely within the definition given by the Supreme Court of California *(In re Estate of Mary Jane Donahue, deceased,* 36 Cal. 332), where the court defines an inheritance as follows:

> "An estate by inheritance is one that has descended to the heir and has been cast upon him by the single operation of law."

It is now the law of Oklahoma that estates of the deceased allottees are ancestral in their nature and must be treated as such, *McDougal* v. *McKay,* 237 U. S. 372. It seems to be the universal rule of the courts in passing on the complicated Indian titles to do as the Supreme Court of Oklahoma did in the case of *Cook* v. *Childs,* namely, to hold that an absolute seizure is not necessary because were that so the obvious provisions of the statute would become an absolute nullity. We cite the case of *Schultis* v. *McDougal* (170 Fed. 531), wherein the court says:

> "The word descend is of course inapplicable to the actual contingency provided for by

the statute, because that contingency contemplates the death of the child before he had actually become seized of any interest in the land. The word descend is a word of ~~art~~ and indicates the transference of property by inheritance. If any significance is to be given to it as used, in this section, it must be held that the intent of the parties to the agreement was that the land should pass to the same persons and in the same proportions as it would have passed, if the child had died seized of it. Any other construction simply obliterates this word and makes the land pass to the parties who are heirs directly by allotment from the tribe."

We maintain that the opinion of *Cook* v. *Childs* as well as the opinion of the Supreme Court of the State of Oklahoma in the case at bar is as sound in theory, and as near perfect, as can be conceived by any court upon similar given facts and conditions.

We insist that the opinion criticised by counsel for plaintiff in error, *Cook* v. *Childs*, merely follows the Arkansas case heretofore cited. The Oklahoma Supreme Court knew full well that it is impossible to construe the various acts of Congress relative to the Indians in the same strict and technical sense as the statutes of England or even the statutes of the various states in the American Union are construed, because of the fact that the Acts of Congress become merely sign posts or milestones; that the best the courts can do is to arrive at the intent and

in arriving at such intent to construe said statute in the best manner possible, as is more fully stated by the opinion of the Supreme Court of the United States in the case of *McDougal* v. *McKay* (237 U. S. 372), where the court says:

> "We recognize the unusual difficulties surrounding the problem presented upon the record and appreciate the very forceful argument offered in support of the conflicting theory. The circumstances are novel, and the canons of descent contained in Mansfield's Digest are not precisely applicable thereto, but these rules must be accommodated to the facts and the great purpose of Congress effectuated as nearly as may be, and not only would it be improper for us to disregard the effect of the decisions already announced by the District Court of Appeals and the Supreme Court of Oklahoma, which are supported by cogent reasoning but considering the peculiar and rapidly changing conditions within that state, a special consideration must be given them. We accordingly accept the doctrine therein announced and hold * * * the property must be treated as an ancestral estate."

Another reason stated in the case last quoted by the Supreme Court of the United States, is as follows:

> "Many titles to land on the eastern side of this state have been acquired on the strength of this decision, and to such an extent that the same has become a rule of property."

citing *Dewalt* v. *Cline*, 35 Okla. 157; *MaHarry* v. *Eatman*, 29 Okla. 46, *Duff* v. *Keaton*, 33 Okla. 92.

It appears to us that the same reasoning is applicable to the case at bar. The case of *Cook* v. *Childs* is the recognized law in Oklahoma today, many titles have been acquired on the strength of it, and it is absolutely decisive of the case at bar, in so far as are affected the dower interests of the defendant Annie Wadsworth.

We further submit that no reasonable man can subscribe to the rule contended for by plaintiff in error, namely: that they can deny the seizure of Louis Cox or in other words deny that he was vested of any inheritable estate and at the same time claim under or through him. We believe the rule to be that if he were vested with an estate sufficient to authorize plaintiff in error to hold then he was vested with an estate sufficient for the widow's dower to attach, and for a case illustrating this point we cite *Davis* v. *Darrow*, 12 Wend. (N. Y.) 65. Quoting from the syllabus we have:

> "The widow of an alien is entitled to recover dower in lands, against a party whose title is derived from her husband, although the husband, at the time he took a conveyance of the land, was not entitled to take and hold real estate; and such conveyance was not subsequently affirmed by a statute."

and again from the opinion delivered by NELSON, J., we have the following:

> "In the case now under consideration, there was no statute in existence at the time the husband purchased, with the term of which he has complied, entitling him to hold real estate, nor was such purchase approved by any subsequent statute, (citing authorities), but the defendant derives his title and holds the premises under the husband of the plaintiff, and it has been repeatedly determined in this court that a tenant or defendant in such condition is estopped from denying seisin of the husband."

This we think is the rule of reason and should apply in the case at bar, on the question of the widow's dower.

We further submit that the rule above laid down should be extended so as to bar all persons claiming title in fee under deed from the heirs of the husband as against the widow, and the following authorities hold: that one claiming title in fee under deed from the heirs of the husband cannot, as against the widow, deny the husband's seisin. We cite the following: *Hitchcock* v. *Harrington*, 6 Johns. (N. Y.) 290, 5 Am. Dec. 229; *Collins* v. *Torry*, 7 Johns. (N. Y.) 278, 5 Am. Dec. 273; *Pledger* v. *Ellerbe*, 6 Rich. L. (S. C.) 266, 60 Am. Dec. 123.

Counsel for plaintiff in error cites extensively as his authority for the construction contended for

letters signed by one A. S. McKennon a former attorney for the Seminole Indians. While we have no disposition to question the sincerity of the gentleman in question, we submit that his individual opinion should not be taken as against the entire Seminole tribe as their opinion is expressed in the statute heretofore referred to and which is their thought crystallized into statutory law We suggest that the will of the Seminole people expressed by the enactment of a law should be the controlling construction, as that was but a legislative construction on all the prior statutes passed on the same subject matter, including as the Seminoles believed an interpretation of the Act of Congress itself.

We submit further that the construction contended for and as set out in detail by plaintiff in error on page 47 of the brief, which is as follows:

> "It was not the purpose to limit the right of descent to enrolled citizens. Children of such decedent, if Seminoles, such as would have been entitled to enrollment as Seminoles, under the provisions of the previous legislation and said agreement, had they been living December 31, 1899, would inherit, although not enrolled; but no one who could not have been so enrolled could inherit."

—entitled the children of said Lewis Cox, two of the defendants in error in this case to inherit. Because they were entitled to enrollment as Seminoles, the

fact that they were subsequently enrolled as Creeks by their mother did not change their right to such inheritance as that right became fixed at the death of their father and they became vested with their father's allotment at his death. If they afterwards became members of the Creek tribe whether voluntarily or otherwise their right to hold the land so acquired could only be questioned by the Seminole Nation, and certainly not by anyone claiming under the father.

—*Manuel* v. *Wulff*, 152 U. S. 505;
Phillips v. *Moore*, 100 U. S. 208.

We cite the foregoing cases for the reason that they throw light on legal conditions as they exist in Oklahoma, by virtue of the peculiar conditions arising under the Acts of Congress and the various Indian laws and treaties. It seems to have been the intent of Congress in dealing with the Indians to preserve as much as possible the ideas and traditions of the Indians regarding the disposition of their property. We think that the intent of the Seminole Indians and their idea of the way their lands and properties should descend is clearly expressed in the quotations from the Seminole law, which expresses the custom of the Seminoles crystallized into form in the enactment of said statute. We further believe that the opinion of the Supreme Court of

Oklahoma in this case reaches a good and equitable solution of this mooted question. It is one that appeals to the conscience of the court as well as the dictates of common humanity. It would be absurd to believe that the Seminole Nation of Indians intended to disinherit their children and most assuredly Congress could not be accused of such a gross and backward step as being a party to the provision that would take the lands and property belonging to a father away from his own wife and children and give the same to a stranger. No sort of reason can be given for such a strained construction and we insist that it is not even within the letter of the act, much less within the spirit thereof. Counsel for plaintiffs have quoted at length the various rules for the interpretation of statutes, but the fact must be borne in mind that not in one single instance or in one single case quoted by plaintiff in error has the interpretation of an Indian statute or law been under consideration.

We further submit that there is no reason why a stricter or more forceful rule should be in operation as regards Indians than the rule regarding naturalization of aliens. We believe the rule is so well established that it cannot be denied and consequently it is useless to cite authorities to the effect that an alien woman who marries a citizen of the

American Nation automatically becomes a citizen of the American Nation and her children are citizens of the American Nation. That being true a Creek woman who marries a Seminole citizen certainly becomes a Seminole citizen and their children Seminole citizens. If not, why not? Is there any reason for holding otherwise? Again, it is not to be presumed that the Seminole people intended to cut out from participation their own children. Such an unreasonable thing is not to be expected. Natural inclination or what people would do under like circumstances is the criterion for interpretation of Indian statutes, unless there is some positive contrary intention indicated by the language used.

The last question raised by plaintiff in error, on pages 66 and 67 of the brief, is a question of local practice and is governed by the rules of the Supreme Court of Oklahoma, as constituted by the said Court. By reference to a portion of rule 10, it would be seen that the rule itself specifically provides as follows:

> "and the clerk shall not file such motion or application except by leave of court first obtained."

As a matter of fact, this leave was first obtained from the Supreme Court of the State of Oklahoma, and the Supreme Court of the United States can not presume that the local court acted beyond its scope in granting permission to file any paper in any

case. This court will not review this question because it presents purely a question of local practice.

It is further insisted by the defendants in error that this case should be dismissed by reason of the fact that the appeal was not perfected as contemplated by Act of Congress, of September 6th, 1916, in this: that said cause should have been brought up by writ of *certiorari*. Said act contemplates that cases involving the title to real property shall be carried up by writ of *certiorari* and in behalf of this contention we cite the case of *Prairie Oil & Gas Company* v. *Carter*, passed on by this court in the October, 1916, term, the same being No. 849. No written opinion was rendered by this court in said cause but the facts were that the appeal was taken on writ of error after which motion was filed by defendants in error setting up that the remedy was by *certiorari*. After the original appeal should have been taken, however, plaintiff in error filed a petition for writ of *certiorari*, which was by the court, denied, after which motion was filed by the defendants in error to dismiss for want of proper appeal. This last motion the court sustained. The Federal Statute of Procedure is as follows, to-wit:

> "Judicial Code, Sec. 237. As amended, Act, Dec. 23, 1914, C. 2, and Act. Sept. 6, 1916, C. 448, Sec. 2.—Writs of error from judgments and decrees of State Courts; *certio-*

rari, etc., for review of decisions not reviewable on writ of error.

"A final judgment or decree in any suit in the highest court of a state in which a decision in the suit could be had, where is drawn in question the validity of a treaty or statute of, or an authority exercised under the United States and the decision is against their validity; or where is drawn in question the validity of a statute of, or an authority exercised under any state, on the ground of their being repugnant to the constitution, treaties, or laws of the United States, and the decision is in favor of their validity, may be re-examined and reversed or affirmed in the Supreme Court upon a writ of error. The writ shall have the same effect as if the judgment or decree complained of had been rendered or passed in a court of the United States. The Supreme Court may reverse, modify, or affirm the judgment or decree of such state court, and may in its discretion, award execution or remand the same to the court from which it was removed by the writ.

"It shall be competent for the Supreme Court by *certiorari* or otherwise, to require that there be certified to it for review and determination with the same power and authority and with like effect as if brought up by writ of error, any cause wherever a final judgment or decree has been rendered or passed, by the highest court of a state in which a decision could be had, where is drawn in question the validity of a treaty or statute of, or an authority exercised under the

United States, and the decision is in favor of their validity; or where is drawn in question the validity of a statute of, or an authority exercised under any state, or the ground of their being repugnant to the constitution, treaties, or laws of the United States, and the decision is against their validity; or where any title, right, privilege, or immunity is claimed under the constitution, or any treaty or statute of, or commission held or authority exercised under the United States, and the decision is either in favor of or against the title, right, privilege, or immunity especially set up or claimed, by either party, under such constitution, treaty, statute, commission or authority."

It is clear from the language of the second paragraph of the Act of Congress of September 6, 1916, that Congress had in view the identical class of cases of which the case at bar is included. The language used clearly indicates such intention, which is gathered by the following words:

> "Any cause wherever a final judgment or decree has been rendered or passed by the highest court of the state;"

and the following phrases, also:

> "Or where any title, right, privilege or immunity is claimed under the constitution or any treaty or statute."

From the above it is respectfully insisted by counsel for defendants in error that two modes of

appeal are contemplated. *First:* By writ of error, and *second,* by *certiorari,* and that the case at bar comes under the second subdivision, or in other words, the same should have been by *certiorari* and not by writ of error.

It is respectfully insisted by the defendants in error that the decision of the Supreme Court of the State of Oklahoma should be in all things sustained.

JOHN S. SEVERSON,
Broken Arrow, Okla.;
SAMUEL HERRICK,
Washington, D. C.;
Counsel for Defendants in Error.

CAMPBELL *v.* WADSWORTH ET AL.

ERROR TO THE SUPREME COURT OF THE STATE OF OKLAHOMA.

No. 72. Argued November 21, 1918.—Decided December 16, 1918.

The Seminole Agreement of October 7, 1899, 31 Stat. 250, provides for enrollment by the Commission to the Five Civilized Tribes of "all children born to Seminole citizens," up to and including December 31, 1899, and of all Seminole citizens then living, and that the rolls so made, when approved by the Secretary of the Interior, shall constitute the final rolls of Seminole citizens, upon which allotment and distribution of lands, etc., of the Seminole Indians shall be made, "and to no other persons." The next paragraph prescribes that, if any member of the tribe die after December 31, 1899, the lands, etc., to which he would be entitled if living, "shall descend to his heirs who are Seminole citizens." A father, enrolled only as a Seminole, the roll referring to his wife and family as Creeks, died after that date, leaving a wife and daughters, who were enrolled only as Creeks, their roll describing him as an enrolled Seminole. Both rolls were final; and they, with other evidence, are here regarded as establishing a Creek custom assigning children of mixed marriages the tribal status of their mother. *Held*, that the father's share of Seminole lands, subsequently allotted, did not descend to the mother or the daughters.

53 Oklahoma, 728, reversed.

THE case is stated in the opinion.

Mr. C. Dale Wolfe, for plaintiff in error, submitted.

Mr. Samuel Herrick, with whom *Mr. John S. Severson* was on the brief, for defendants in error.

MR. JUSTICE CLARKE delivered the opinion of the court.

The defendants in error brought suit to quiet title to the lands in controversy in this case, the facts involved being agreed upon as follows:

Louis Cox, whose name appears in the final rolls of the Seminole Tribe of Indians, died intestate, on July 4, 1901, and left surviving him the defendants in error, Annie Cox, his widow, now Annie Wadsworth, and two daughters, Maggie Cox, now Maggie Beamore, and Nancy Cox, now Nancy Alexander. These three women were all duly enrolled on the Creek tribal roll in 1890, and in July, 1901, after the death of Cox, upon an application made in May, 1901, they were enrolled as citizens of the Creek Nation by the Commission to the Five Civilized Tribes, but neither of the three appears on the Seminole rolls. Certified copies of the "final" Seminole roll bearing the name of Louis Cox and of the Creek roll bearing the names of his wife and daughters are in the record. On the former is the notation "Wife and family Creeks" and in the latter Louis Cox is described as an enrolled Seminole.

No allotment of land had been made to Cox at the time of his death, but subsequently the land in controversy was allotted by the United States as his distributive share of the Seminole tribal lands.

The plaintiff in error claims title through one Lucy Wildcat, the only surviving relative of Cox whose name appears on the approved Seminole roll. The widow and daughters claim as heirs of Louis Cox.

The decision of the case depends upon the application to the facts thus stated of the second paragraph of the

agreement between the Government of the United States and the Seminole Tribe of Indians, dated October 7, 1899, and ratified by Act of Congress June 2, 1900, c. 610, 31 Stat. 250, the essential parts of which are as follows:

"First. That the Commission to the Five Civilized Tribes, in making the rolls of Seminole citizens, pursuant to the Act of Congress approved June twenty-eighth, eighteen hundred and ninety-eight, shall place on said rolls the names of all children born to Seminole citizens up to and including the thirty-first day of December, eighteen hundred and ninety-nine, and the names of all Seminole citizens then living: and the rolls so made, when approved by the Secretary of the Interior, as provided by said Act of Congress, shall constitute the final rolls of Seminole citizens, upon which allotment of lands and distribution of money and other property belonging to the Seminole Indians shall be made, and to no other persons.

"Second. If any member of the Seminole tribe of Indians shall die after the thirty-first day of December, eighteen hundred and ninety-nine, the lands, money, and other property to which he would be entitled if living, *shall descend to his heirs who are Seminole citizens*, according to the laws of descent and distribution of the State of Arkansas, and be allotted and distributed to them accordingly: *Provided*, That in all cases where such property would descend to the parents under said laws the same shall first go to the mother instead of the father, and then to the brothers and sisters, and their heirs, instead of the father."

Plainly the facts agreed upon bring the case within the scope of the second paragraph thus quoted, and whether Lucy Wildcat, the only surviving Seminole relative of the deceased, or the wife and daughters of Cox, inherited the land in controversy depends upon the effect to be given to the phrase, "shall descend to his heirs who are Seminole citizens."

The Supreme Court of Oklahoma seemingly had little difficulty in concluding that this expression excluded "heirs" who were not Seminoles, and it adopted unanimously as its own the opinion by the Commission which found in favor of the plaintiff in error, containing the following: [154 Pac. Rep. 60, 61].

"The act under consideration says that such property 'shall descend to his heirs who are Seminole citizens.' Who are Seminole citizens as here designated? Section 1 of the act set out above provides for the enrollment of the Seminole citizens and says that in making out this roll the names of all of the citizens living on the 31st day of December, 1899, and all the children born to Seminole citizens up to that date, shall constitute the final rolls of Seminole citizens. In section 21 of the Original Curtis Act (Act Cong. June 28, 1898, c. 517, 30 Stat. 502), which provided for the enrollment of the citizens of the Five Civilized Tribes, which included the Seminole Nation, there is a provision which reads as follows:

"'The rolls so made, when approved by the Secretary of the Interior, shall be final, and the persons whose names are found thereon, with their descendants thereafter born to them, with such persons as may intermarry according to tribal laws, shall alone constitute the several tribes which they represent.'

"From the reading of these two sections last above set out it plainly appears that neither the widow of the decedent Louis Cox, nor their two children, can be denominated 'Seminole citizens.' The widow undoubtedly is not so included because she is of the Creek blood and a citizen of that tribe, and the two children are excluded because they were born before December 31, 1899, and were not enrolled as Seminole citizens, and thus do not come within the provisions defining Seminole citizens."

But upon a rehearing of the case the court "withdrew" its former opinion and held that Congress intended that

the words "Seminole citizens" in the second paragraph of the act should have a more elastic meaning than was in terms given to them in the first paragraph and, by interpreting them so as to include the wife and daughters of the deceased, it found the title to the lands to be in the latter subject to the dower estate of the former. [53 Oklahoma, 728].

This judgment, being within the provisions of § 7 of the Act approved September 6, 1916, amending § 237 of the Judicial Code (39 Stat. 726), is properly before us for review on writ of error.

The first paragraph of the agreement, which we have quoted, prescribes the persons whose names shall go upon the Seminole roll and it declares that the rolls so made, when approved by the Secretary of the Interior, "shall constitute the final rolls" of "Seminole citizens" and that to these "and to no other persons" shall allotment of property be made. This definition of "Seminole citizens" is followed in the second paragraph with the provision that the property of an intestate, such as we have in this case, shall descend to his heirs who are "Seminole citizens."

There is nothing in the act to indicate an intention on the part of Congress or of the tribe that the words, "Seminole citizens," as used in the second, shall have any other meaning than that specifically given to them in the first paragraph, but, on the contrary, both the natural and the legal inference from their being used in such juxtaposition is that the same meaning shall be given them and that if a different or more comprehensive meaning had been intended it would have been expressed.

But there are other cogent reasons why courts should not modify these final rolls by liberal interpretation of this statutory provision.

The rolls of the Seminole Tribe were compiled by the Commission to the Five Civilized Tribes, a quasi-judicial tribunal, to which large powers were given by statute for

that specific purpose, and the action of the Commission, when approved by the Secretary of the Interior, made "final" by the statute, so conclusively settles all questions within its jurisdiction as to membership in the tribe and as to the rights of the Indians to tribal property, that they are subject to attack, as the judgments of courts are, only for fraud and mistake—of which there is no suggestion in this record. *United States* v. *Wildcat*, 244 U. S. 111.

The principal reason given by the Oklahoma Supreme Court for its second conclusion is that, the daughters of Cox being children born to a Seminole citizen prior to the 31st day of December, 1899, were entitled to enrollment as Seminole Indians under the first paragraph of the agreement and if so enrolled would be strictly within the terms of the act and would inherit the land.

We think it very clear that this reason is not sound.

The Seminole Tribe was derived from the Creek, and the tribal customs and traditions of the two had much in common. While this record does not show specifically what the tribal custom of the Seminoles was with respect to tribal recognition of children born of mixed marriages, it does show definitely that by the Creek Indians, and it is with enrolled Creek Indians that we are dealing, the children of mixed marriages were treated and enrolled as members of the tribe of their mother, for the names of the daughters of Cox are found on the tribal roll of the Creek Indians of 1890, when they were very young children, and again in 1901, when Maggie was twenty years of age and Nancy was seventeen, apparently on their own application, they and their mother were placed by the Commission on the final roll of the Creek Tribe. This Creek roll also shows that the father of the children, Louis Cox, was a Seminole, and the Seminole roll on which Cox's name appears bears the notation, "Wife and family Creeks." Thus it is plain that it was not through any mistake or

oversight that the children of Cox were omitted by the Commission from the Seminole roll and were placed upon the Creek roll, but that this was done for the sufficient reason that tribal custom and tradition required their enrollment as Creeks, and the law nowhere provided for their enrollment in more than one tribe. The final rolls, alike of the Seminoles and of the Creeks, thus made up by the Commission, were placed by the act of Congress, as we have seen, beyond amendment by the courts on such a record as we have here, and it is impossible for us to conclude that the daughters of Cox were entitled to enrollment as members of the Seminole Tribe, or that having been enrolled as Creeks they may now be given the rights of enrolled "Seminole citizens."

The Supreme Court also says that only "the most powerful and impelling reasons" could induce it to hold that it was the intention of the Indians to exclude their own children from participation in the distribution of their property after death.

While it is true that it seems unnatural for the Indians to have preferred more distant relatives to their own children in providing for the descent and distribution of their property, yet from the terms of the act before us, and also from the provisions of the Supplemental Creek Agreement that "only citizens of the Creek Nation, male and female, and their Creek descendants shall inherit lands of the Creek Nation" (32 Stat. 500), it is clear that with the Indians the interests of the tribe were paramount to those of the family and it was with a knowledge of the mode of life of their primitive people, better and more intimate than the courts can now command, that they determined that this paramount purpose would best be served by giving to children born of mixed marriages the tribal status of their mother.

As we have said, this record does not show affirmatively that the Seminoles had a custom similar to this one of

the Creeks, but such is believed to have been the fact. The Supreme Court of Oklahoma, in its first opinion, said [154 Pac. Rep, 60,61]:

"The defendants have presented the additional proposition here that, according to the custom of the Seminole Nation, the blood of the mother determined the tribe to which the offspring belonged, and the fact that the children, plaintiffs here, were not enrolled as Seminole citizens was not due to any neglect of the parents of the said children or of the Commission to have said children enrolled on the Seminole roll, but the law and the custom of the Seminole Tribe were that the children were of the blood of the mother and members of that tribe to which the mother belonged. While we do not find it necessary to pass upon this proposition, and will leave it, as far as this opinion is concerned, an open question, yet we will say that as far as our investigation has led us, we are of the opinion that this last proposition is a correct statement of the law so far as it applies to the facts as presented in the case at bar."

In *Hughes Land Co.* v. *Bailey*, 30 Oklahoma, 194, the same court in discussing the rights of two daughters born of the marriage of a Creek man to a Seminole woman, said (p. 196): "By virtue of the citizenship of their mother they [the daughters] were enrolled as citizens of the Seminole Nation." And it may be noted that this custom prevails with the Seminole Indians of Florida, from whom those of Oklahoma are derived. (Annual Report, Bureau of American Ethnology, 1883–4, p. 508.) But the most persuasive evidence of this custom is, that the Federal Commissioners with, as we have seen, all of the facts as to parentage before them and considered, enrolled the daughters of Cox in the Creek Tribe of their mother and not in the Seminole Tribe of their father. The Commissioners in making up the rolls which were to be "final" were given authority to consult tribal records and rolls

and "to adopt any other means by them deemed necessary to enable them to make such rolls," (30 Stat. 495, § 21) and in their conclusion, arrived at after many years of experience and painstaking investigation, may well be found a cogent and impelling reason for accepting the terms of the statutory agreement as they are plainly written and for refusing to enlarge them by interpretation.

On its surface this case is typical of those hard cases which proverbially make bad law, but in reality, since the widow and children of Cox, as enrolled Creeks, were entitled each to an allotment in the Creek lands and property (30 Stat. 495, § 21; 31 Stat. 861, §§ 3, 28; and 32 Stat. 500, §§ 7, 8 and 9), their being excluded from an inheritance which they did not attempt to claim for a dozen years after the death of Cox does not present a degree of hardship calling for a strained interpretation of a plain statutory provision limiting inheritances to enrolled Seminole citizens, so that it may include not only persons not so enrolled, but persons who were actually enrolled as Creek citizens.

The conclusion we are announcing is consonant with prior holdings of this court under similar statutes. Thus, in *Washington* v. *Miller*, 235 U. S. 422, under the proviso in the Supplemental Creek Agreement of June 30, 1902, 32 Stat. 500, that "only citizens of the Creek Nation, male and female, . . . shall inherit lands of the Creek Nation," a judgment was affirmed, holding the grantee of a Creek mother entitled, as against the claims of a Seminole father, to lands inherited from the child of their marriage enrolled as a Creek, when, if the father had been an enrolled Creek, he and the mother would have shared the land equally.

And in *McDougal* v. *McKay*, 237 U. S. 372, again under the Supplemental Creek Agreement, it was decided that the Creek father of a child born of his marriage with a non-Creek mother inherited the entire estate of the child,

which died intestate, although his wife would have taken equally with him had she been an enrolled Creek.

All statutes of descent and distribution are arbitrary expressions of the purpose of the law-making power; and that the provisions of such a statute do not happen to meet the notions of justice of a court is not sufficient reason for indulging in an interpretation which modifies their plain and unambiguous terms. Especially is this true of these Indian statutes which are a progressive development, embodying concessions to tribal custom and tradition necessary to be made in order to accomplish a practical, though perhaps not an ideal, dissolution of the tribal relation and distribution of the tribal property.

The rights of this Creek mother cannot rise higher than those of her daughters.

It results that the judgment of the Supreme Court of Oklahoma must be reversed and the case remanded for further proceedings not inconsistent with this opinion.

Reversed.